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Vol. XV

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No. 1

POLITICAL AND CONSTITUTIONAL ASPECTS OF THE NEW DEAL

BY ISIDOR LOEB
Washington University

The 73rd Congress of the United States will be distinguished in our history by reason of its achievements during the special session of 1933. Its legislation, that embodies the principles of the New Deal, is the most important and extraordinary ever enacted at one time by any representative body in this or any other country. It represents an experiment in national control of agriculture, industry, finance, trade, and labor. The attempt is being made through national governmental agencies to increase commodity prices, provide relief and reduce unemployment, stimulate purchasing power, alleviate the situation of distressed debtors, and bring about a general business recovery.

Divergent opinions naturally exist regarding some of the economic principles at the basis of this program and the details of the administration provided for carrying the plan into execution. These do not come within the scope of this discussion. It is equally clear, however, that many persons, whether they accept or reject the economics of the New Deal, have grave concern and apprehension regarding its political and constitutional aspects. Popular enthusiasm for the President and the fear complex that affected those who were regarded as responsible for the existing disastrous situation prevented much public expression of these views during the early stages of the New Deal. During recent months, however, increasing criticisms and warnings regarding these features have been voiced. Typical of these are the following quotations from a statement issued on March 17, 1934, by Representative and former Senator James W. Wadsworth:

"I hope the Republican party will have the courage and vision to come to the defense of the Constitution and the American con-

ception of liberty. There is a great battle to be waged around this fundamental issue. . . .

"We are compelled to look to the future and do so with deepest concern. Every citizen must ask himself: 'What kind of a government are we to live under hereafter?' None can deny that the Roosevelt policy means a complete transformation of the political and economic picture in this Republic.

"We are heading into something never dreamed of in the Constitution. The whole fundamental conception of the relationship of the citizen to his government is undergoing violent change. . . .

"Moreover the Federal Government is invading the prerogatives of the states. It is taking over to itself all those powers that are reserved under Article 10 to the states and their peoples."

Statements of this character may not be disregarded as merely the expressions of partizan opposition. American political ideals have an historical and rational basis in the consciousness of the people and any fundamental departure therefrom must be satisfactorily explained and justified. Before this can be attempted it is necessary to consider the nature of the problem with which the New Deal is concerned as well as its historical background.

The business and financial depression of recent years represents the result of certain maladjustments in human social relationships. Hence the questions of recovery and prevention of recurrence were problems of our social world. There is a striking contrast between the methods that have been used in dealing with problems of this character and those that usually obtain in matters affecting our physical world.

In the latter field scientific principles predominate. When an evil develops out of our physical environment curative methods are used but research is applied to the discovery of the cause and the providing of preventive methods for the future. The epidemic of encephalitis in St. Louis last summer furnishes a recent example of the general plan. Local physicians functioned efficiently in providing relief for those who were attacked. At the same time local, state, and national public health experts were mobilized for the purpose of studying the cause of the outbreak and of developing means of prevention and immunity.

On the other hand there is to be found in general an absence or inadequacy of preventive methods in dealing with evils arising in our social world. Even in the matter of relief for the sufferers

the plans in most cases have not been based upon scientific principles and have been far from adequate in character. This situation has been due to several causes.

It must be frankly admitted that the data involved in human relationships are intangible and evasive and that great difficulty if not impossibility attends their exact determination.

Many persons adopt the medieval attitude of regarding such matters as inevitable. During this depression a captain of industry said: "We have always had depressions and we shall always continue to have them. We must let this one run its natural course when it will be followed by an era of prosperity." He neglected to emphasize that, according to his theory, the latter would in turn be followed by another depression.

In social and political affairs many persons act under the influence of sentiment, tradition, and prejudice as opposed to reason, intelligence, and realities. Fictions instead of facts predominate in these fields. Persons do not hesitate to act on the basis of cock-sure opinions on social, economic, and political questions instead of being influenced by rational conclusions based upon careful investigation.

A consideration of the historical background furnishes some explanation for this prevailing attitude. The men of the Eighteenth Century were under the influence of ideas of natural rights and individualistic theory that corresponded closely with the actual conditions existing in this country at that time. They believed that government best which governs least. While they recognized that evils would arise from unrestricted competition they assumed that enlightened self-interest would furnish the necessary remedies.

In the course of time it became clear that changes in social and economic conditions created obstacles to the free operation of this method. It was recognized that governmental regulation was necessary where public welfare was involved or where the individual was incapable of judging with regard to his best interest. While every innovation encountered opposition, social control was gradually introduced in matters affecting health, safety, labor interests, trusts and combinations, banking, insurance, securities, etc.

The division of powers in our Federal system left most of these matters under state control and serious difficulty was encountered in making this effective. In the first place, most of the states retained an antiquated system of governmental organization with

an inefficient type of administration which was further impaired by the election or appointment of partisan officials.

Equally important was the fact that the newer problems became national in their scope and significance. Ignorance, poverty, disease, immorality, and crime did not observe state boundaries but exercised an influence over adjacent states and the Nation. Many large industrial and commercial organizations were not confined in their activities to one state and could not be regulated adequately by it. The states, moreover, could not regulate interstate or foreign commercial matters though these frequently were important factors in the problem. Under these conditions demands were made upon Congress and national legislation and administration were secured in much the same way as had been the case in the states.

Congress in the exercise of its power over interstate commerce enacted regulations governing pure food and drugs, lotteries, crimes, transportation rates, safety appliances, and other matters affecting railroads, trusts and combinations, etc. In the exercise of its power over the postal system it sought to protect morals and prevent fraud. Congress also used its power of taxation for regulatory purposes as in the case of oleomargarine and narcotics. Finally, it undertook to assist and stimulate state activity by granting federal aid in the fields of education, agriculture, highways, health, industry, and military affairs.

Federal supervision, direction, and control were connected with most of these grants, thus increasing the functions of national officials in local matters. It should be emphasized that not all of these measures were of a control character. Some of them provided important services and were intended to assist and make the operation of private undertakings more efficient in character. However, as the President's Research Committee on Recent Social Trends states in its report: "Since government action means more to us, we call for more of it when in need, and object to it more strenuously when it hampers our plans." Many of the congressional acts, accordingly, were criticized and opposed as involving unconstitutional expansion of national powers and encroachments upon the field of state activity. They undoubtedly represent a great departure from the ideas that prevailed when the Constitution was adopted. It should be recalled, however, that the constitutionality of most of these acts had been sustained by the Supreme Court some time in advance of the appearance of the depression.

The Hoover Administration when confronted with this crisis apparently regarded it as a temporary phenomenon. When its far-reaching consequences were recognized a sincere and courageous effort was made, along traditional lines, to bring about a restoration of the normal conditions of the old system. The failure of this method was strikingly evidenced by the collapse of the entire banking structure at the close of that administration.

The inauguration of President Roosevelt was characterized by a complete and radical change in policy. The new administration looked forward instead of backward. There was a frank avowal of an effort to use new methods of recovery and to reconstruct upon a new basis that would be more in accord with the actual facts of modern society. The early New Deal legislation and administration were based upon the emergency created by the depression. Later developments, however, have clearly shown that many of the new methods are intended to be part of a permanent plan for our future social, economic, and governmental structure. This makes imperative an analysis and appraisal of its political and constitutional aspects.

In the first place it is claimed that the New Deal involves a departure from and ultimate destruction of the system of individualism which prevailed at the beginning of our national history and under which this country has attained its marvelous growth and development. Individual initiative and freedom in the use of property and in the making of contracts without governmental restrictions or regulations were the fundamental features of our traditional policy. The charge is made that under the new régime these have been or will be discarded and a system of Socialism or Communism established.

It is evident that the New Deal has introduced and proposes a large amount of social or governmental action, but it is equally clear that this falls far short of either State Socialism or Communism. Continued emphasis has been placed upon the policy of partnership between government and business and there has been insistence upon the effort to preserve the capitalistic system by eliminating those features that otherwise must involve its destruction. Any plan to harmonize the different elements of this system is in direct opposition to Communism, which regards them as in irreconcilable conflict. Business Socialism has been suggested as a more descriptive term for the new plan.

Undoubtedly, the New Deal constitutes a departure from the individualistic ideals and methods of the Eighteenth Century.

This is not something that is new or strange in our experience but is part of a process that commenced more than a half-century ago and has been continued at an accelerated pace. As previously indicated, because of technological and other changes it was found necessary to restrict individual freedom in the interest of general welfare. The New Deal has not introduced a revolution in this field but is unique by reason of the new and greatly increased governmental regulations provided within such a short period. It is claimed that in our rapidly changing world these measures are necessary to insure individual freedom of opportunity. The entire program is based upon the conception that government exists for the promotion of general welfare and for the purpose of securing the pursuit of happiness as well as for the protection of persons and property. These aims are announced in the Declaration of Independence and the Preamble to the Constitution. While the latter are not laws they express the political ideals of the Eighteenth Century.

The second indictment of the New Deal is that it greatly impairs the principle of local self-government by substituting national unified regulations in fields that have been and should be left for separate and diversified state action. The new legislation came from Congress and it is being administered under the direction, supervision, and control of national agencies. This is characterized as an improper encroachment upon state functions and a prelude to national centralization and destruction of local autonomy.

Those who are familiar with American history will not hesitate to declare that the New Deal is in conflict with the ideals of the founders of this Republic. After the Revolution the chief problem was that of preservation of the Union. The states were jealous of their sovereignty and in adopting the Articles of Confederation they made the national Government a framework without substance, a deliberative assembly without real or effective powers. As thoughtful statesmen realized that independence could not be retained without union and that this would disappear unless the united government possessed adequate powers, a movement arose which culminated in the Constitutional Convention. The chief task of the members of that body was to devise a scheme of government which, while granting adequate powers to the national authority over matters of common interest, would leave the states free and unrestricted in dealing with their internal affairs. The Constitution contains their solution of this

problem. The powers granted to the national government were for the most part restricted to taxation, foreign relations, military and naval affairs, interstate and foreign commerce, money and the postal system. With a few exceptions all other matters were left to be regulated by the states.

Even in that early period there were some who expressed fear that the national government would encroach upon the functions of the local commonwealths. In order to satisfy these critics an amendment to the Constitution was ratified in 1791 which provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." As indicated above, events have not only justified the earlier apprehensions, but have gone far beyond anything that was imagined. Long before the depression national officials were concerned with matters relating to internal commerce and transportation, industry and labor, agriculture, education, morals, health and general welfare.

Here again the New Deal has not inaugurated a process that is novel or revolutionary in our experience. It has extended it to unusual fields with far-reaching consequences and has brought this about more abruptly and rapidly. Fundamentally, however, the new development is the logical outcome of the old. To characterize the movement as congressional encroachment upon state functions is to overlook the fact that the voters who elect congressmen are the same as those who choose state legislators. The earlier developments in this process were due to needs arising in our changing world that could not be satisfied by state legislation and administration. Preceding the New Deal were two unusual decades during which an extraordinary mass of objective facts were brought within the personal experience of individuals. The depression, coming at the end of this period, furnished the impetus for the demand for rapid and radical acceleration in the old procedure.

The final political criticism of the New Deal is that it has destroyed the ideal of a "government of laws instead of men" and has established a dictatorship in place of representative government. Congress, it is claimed, has vested in the President and in administrative officials vast powers of discretion in the enactment of regulations that violate the principle of separation of powers and subject persons and property to the uncontrolled will of executive officials.

The charge that a dictatorship has been established may be easily disposed of by calling attention to the fact that elections of members of Congress are uncontrolled by the Executive and that freedom of speech and press remain. On the other hand, the New Deal clearly involves executive initiative, leadership, and action that are contrary to the political ideals of our early history. The men of those days believed in the separation of governmental powers and that it was the exclusive function of Congress to legislate. The extensive and important regulations issued by the President and other officials under the New Deal appear to be in derogation of these principles.

As in the two other cases, however, this is not something new in our political experience. As long as conditions were simple the traditional policy was followed. Congress found it increasingly difficult and finally impossible to provide in its legislation for all of the details of administrative action. Without undertaking to trace the entire development it may be noted that nearly 50 years ago, in passing the Interstate Commerce Act, authority to issue regulations was vested in the Commission created at that time. From time to time similar authority has been vested in the President regarding tariff rates and in heads of departments concerning various matters falling under their administration.

It is true that in the New Deal Congress delegated much greater power than ever before. It must be noted, however, that the broader scope of action contemplated involved such complex and diverse problems that proper regulations required investigation and experimentation for which expert assistance was a necessary prerequisite. After all, is there any alternative? Despair over the failure of representative legislatures to deal with the complexities of our modern life has led in many European countries to the dictatorship of the aristocracy or proletariat. If representative government is to be preserved under modern conditions it must have the assistance of executive leadership and initiative.

Even if it be established that the New Deal is in accord with American political ideals as these have developed to meet changing conditions there remains the important question of the constitutionality. Under our system of limited government it is clearly recognized that the courts have the power to review legislative acts and, if they find them in conflict with the Constitution, to declare them invalid. Will the New Deal survive this scrutiny?

The answer to this question depends in the first place upon the nature of the Constitution, a matter concerning which widely

divergent opinions have prevailed. Some, who are unaware of the influence of social and technological changes upon political institutions believe that the Constitution is fixed and immutable and has undergone no modification except as provided by formal amendments. Others may be sufficiently naive to believe that the fathers contemplated and provided for the present exercise of governmental powers. Most of those who insist upon its unchangeable character, however, assert that judicial interpretation has preserved the balance, rejecting those acts that are in conflict and sustaining those that are in accord with the provisions of the Constitution. They fail to perceive that in many cases, during the last three decades, that have been decided by a divided Court, the justices have differed not so much regarding legal principles as concerning the existence and significance of certain facts.

Happily the Supreme Court has made clear the flexible and elastic character of our organic law. For example, in upholding a zoning act it said: "Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive." And this year, in the Minnesota Mortgage Moratorium Case, Chief Justice Hughes said: "It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity." Hence, though many of the New Deal regulations, whether enacted by state or national governments, would have been declared unconstitutional in the Eighteenth or Nineteenth centuries, this fact alone is not sufficient to establish their invalidity today.

The question of unconstitutionality of these regulations affects only a few though highly important provisions of the Constitution. These are the powers of the national government over taxation, money and interstate commerce, the non-delegation of legislative power, the division of powers under the federal system, and the due process of law clause. No serious contention has been raised regarding the constitutionality of the processing taxes or

acts affecting the monetary system. The abrogation of the gold clause in contracts has been assailed but it is probable that the Supreme Court will sustain the Administration in this matter.

So far as the division of powers or the power of Congress over interstate commerce are concerned, no cases, involving the New Deal on these issues have been passed upon by the Supreme Court. The opinions of that body in earlier cases, however, justify the prediction that when called upon the Court will not invalidate the legislation on either of these issues. Numerous acts of Congress, that gave national agencies control over matters that were clearly within the reserved powers of the states, have been sustained because the Court found that they were necessary and proper in carrying out some of the express powers of Congress. Examples are the Lottery, White Slave, Food and Drugs, and Kidnaping Acts. While all of these and similar acts were designed to affect and had great influence over the internal affairs of a state they did not specifically apply to commerce wholly within a state. The Child Labor Act, which was intended to restrict the employment of children within the states, was declared unconstitutional in 1918, in a 5-to-4 decision. The majority of the Court were of the opinion that it had no relation to interstate commerce but the strong dissenting opinion maintained that the Act was within this power of Congress.

The New Deal has been challenged because it regulates barbers, dyers and cleaners, retail stores, filling stations, etc., that are clearly engaged only in intrastate commerce. In contrast to the Child Labor Case, however, the Supreme Court has held that Congress may regulate intrastate commerce whenever this is reasonably necessary for the proper control of, or to prevent interference with interstate commerce. Under modern conditions commerce has tended to become a unit and purely local transactions frequently have an important influence on interstate and foreign commerce. The National Industrial Recovery Act and the Agricultural Adjustment Act declare that the conditions growing out of the depression burden interstate and foreign commerce and that it is the policy of Congress to remove these obstructions to its free flow or which tend to diminish the amount thereof. The Supreme Court has shown an increasing tendency to recognize the realities of modern life and doubtless will hold that Congress was justified in believing that the new regulations were reasonably necessary to accomplish the purpose.

The claim that Congress, in giving the President and other officials such extensive power of enacting regulations, has violated the constitutional prohibition upon the delegation of legislative power, in all probability will also fail to be accepted by the Supreme Court. It has been shown above that this has been done in many cases for a long period of time. Legal attacks upon these grants of power to executive officials have been uniformly rejected by the Court. This body has held that so long as Congress determines the general policy it may give to executive officials wide discretion in carrying out the details. While the New Deal grants far more extensive powers of this nature, the principle is the same and the program will survive any attack of this character.

The remaining basis of constitutional attack, that persons are deprived of liberty or property without due process of law, presents a more serious problem. The recent legislation and the provisions of the codes and other regulations that have been made under its authority, involve extensive governmental control of production, manufacture, business and property. Moreover, while the Supreme Court had sustained some control of this character, new elements, that its previous decisions had implied would be improper, have appeared in the present regulations.

The requirement for due process of law as a limitation upon the power of the national government has been in the Constitution almost from its establishment, having been incorporated in the Fifth Amendment, which was ratified in 1791. It was intended to guarantee regular procedure in matters of administration and was not regarded as a restriction upon the character or substance of legislation. This apparently continued to be the view when it was included in the Fourteenth Amendment as a limitation upon the states. Later, however, the Supreme Court changed its attitude and in a number of cases developed the provision as a restriction upon legislation affecting freedom of contract, regulations of property, hours and wages of labor, etc. Many persons, including some outstanding Justices of the Supreme Court, felt that this was an improper interference with legislative policy and the Court had great difficulty in establishing any clear test for distinguishing between valid and invalid acts in the field of social regulation.

In general, the Court held that the act to be valid must be reasonable and not arbitrary. This made the decision depend upon certain facts and, while the Court indicated that any legislative

declaration regarding such facts was entitled to great respect, it reserved the right to reject it if in the opinion of the Court the actual situation did not support the legislative action. Naturally this resulted in division of opinion among members of the Court, some of whom could not escape the influence of traditional or other views on social matters.

In a great emergency, however, such as that created by a war, acts that normally would have been held invalid, would be sustained during the conditions created by the special situation. In view of this attitude it was believed that the emergency created by the depression would be sufficient to sustain the validity of the New Deal as a temporary though not as a permanent program.

Two recent decisions of the Supreme Court, while not directly involving the New Deal legislation of Congress, furnish strong support for the opinion that the latter will not be held to violate due process of law either during the emergency or as a planned policy for the future. In the first of these, the *Minnesota Mortgage Moratorium Case*, the Court practically overruled its decisions in earlier similar cases and sustained the Minnesota law. Chief Justice Hughes in giving the opinion of the Court said: "Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the state itself were touched only remotely, it has later been found that the fundamental interests of the state are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends."

The other decision in the *New York Milk Case* involved the important question of governmental price fixing. While the Court had upheld the regulation of prices charged by public utilities and other businesses affected with a public interest, this was based upon the special privileges granted to such agencies or because of their monopolistic character. Neither of these factors were present in the case of the dairy that had been subjected to restrictions upon its prices. Nevertheless, the Court said: "It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts . . . is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. . . . But there can be no

doubt that upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells.

"So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose."

Four of the Justices dissented in each of these cases but it is clear that the Court recognizes that the state possesses the power of protecting its fundamental interests by adopting whatever policies may reasonably be deemed necessary for that vital purpose. While both cases involved the powers of states it may be anticipated that when the Court is called upon to review the extraordinary legislation of Congress it will reach a similar conclusion. Particular regulations or methods may be found defective but the existing conditions will be held sufficient to justify the exercise of the paramount right of Congress to adopt the general policies necessary for safeguarding the fundamental interests of interstate and foreign commerce.

In conclusion, as was indicated at the outset, this discussion has not been concerned with the economic principles or methods of the New Deal. This applies equally to approval or disapproval of matters of public policy and governmental organization. Some may believe that it would be better if we could go back to the simple political conditions of the Eighteenth or Nineteenth Century. This, however, would be possible only if we could return to the social and economic life of that period. The problem of today is well expressed by the following statement in the Report of the Rockefeller Commission on Liquor Control:

"Today we are confronted with practical realities. It is not a question of the kind of world we might prefer; it is a question of what we can achieve in the kind of world we have."

THE MIXED CONSTITUTION AND THE SEPARATION OF POWERS

BY FRANCIS G. WILSON

University of Washington

The question of whether the American application of the Eighteenth Century doctrine of the separation of powers carried with it any substantial change or development is seldom raised. It is perhaps worthwhile to examine the French and British doctrines, and to determine from this whether the American use of the principle involved any contribution. To state conclusions first, an effort is made here to show that the American Founding Fathers did construct, upon the basis of older materials, at least a new application of the axiom of the separation of powers, if they did not in fact evolve a new doctrine adapted to new circumstances.

The approach to this question which is adopted here is doctrinal rather than historical. There is some differentiation in power and function between the organs of any government. It is probable that without a strong dogmatic foundation the concept of the separation of powers would never have taken on the significance which it did in early American constitutional history. Recent historical discussions of this problem which tend to show the institutional contribution to this interpretation of government and liberty do not in reality solve the issue of doctrinal foundations. If the separation of powers implies a "dynamic equilibrium," the mixed constitution suggests the principle of "static equilibrium" as the guarantor of political stability.¹

A convenient start for this analysis may be found in the writings of Paul Janet.² Taking the principles of Montesquieu as set forth in Book XI of *L'Esprit des lois*, Janet observes that one can discover a free constitution only when there can be no abuse of

¹W. S. Carpenter, "The Separation of Powers in the Eighteenth Century," *The American Political Science Review*, XXII (1928), 32. Professor B. F. Wright, Jr., "The Origins of the Separation of Powers in America," *Economica*, No. 40, May, 1933, p. 170, mentions the difference in doctrine between Montesquieu (and *a fortiori* the British constitution) and the Founding Fathers, but instead of accepting an evolution in doctrine he suggests that much of the principle of the separation of powers came from earlier American institutional developments.

²Paul Janet, *Histoire de la Science politique dans ses rapports avec la morale* (5th edition), 2 vols. Paris.

power, and in order to prevent abuse power must check power. Thus there should be, on the model of the British constitution, an equilibrium and balance of powers in the state. Montesquieu was the first to see in the separation of powers the primary guarantee of liberty, and in their distribution the true measure of liberty.³ While there must be a separation of legislative and executive powers, the greatest danger to liberty arises if the judiciary is attached to another power. But between the executive or king and the legislative power or the representatives of the people there is an intermediate power which unites and moderates the two. This is the body of persons who have special privileges in the state, that is, the nobility. The nobility must have a distinct and separate house in the legislature that it may defend its own interest and moderate the constitution.⁴

Janet thus discovers in Montesquieu's conception three sorts of governments and three sorts of powers in the governments. The government may be republican, aristocratic, or monarchic, accordingly as the people, the nobles, or the king govern. But while there may be any one of these forms, there may be a combination of them, that is, the government may be mixed. This is clearly the ancient theory of Aristotle, Polybius, and Cicero. Janet believes that the separation of powers is the fundamental aspect of Montesquieu's theory. Yet one may question this, for a careful reading of Montesquieu might indicate that the two ideas are inextricably interwoven, or, in other words, the separation of powers is but a factor in the construction he made of the idea of mixed government.⁵

In support of his contention, Janet states that in fact the theory of the separation of powers and the concept of mixed government must be regarded as independent principles. The United

³*Ibid.*, II, 367.

⁴In Book XI, Ch. VI, Montesquieu observes: "Il y a toujours dans un état des gens distingués par la naissance, les richesses ou les honneurs; mais s'ils étoient confondus parmi le peuple, et s'ils n'y avoient qu'une voix comme les autres, la liberté commune seroit leur esclavage et ils n'auraient aucune intérêt à la défendre, parce que la plupart des résolutions seroient contre eux. La part qu'ils ont à la législation doit donc être proportionné autres avantages qu'ils ont dans l'état: se qui arrivera s'ils forment un corps qui ait droit d'arrêter les entreprises du peuple, comme la peuple a droit d'arrêter les leurs."

⁵Janet, *op. cit.*, II, 370.

States, for instance, has a simple government—republican democracy—and the separation of powers, while Rome had a mixed government but no separation of powers. Montesquieu recognized that the absolute power of the people was not a sufficient guarantee of liberty, and as a check on their absolute power the representatives of the people must not have vested directly in them the executive power of government. For himself, Janet contends that the separation of powers will prevent some abuses, *e.g.*, despotism, but not all of them. With Kant, he sees the final security against abuse in opinion and in the freedom of the press.⁶

Arising from these conceptions, Janet finds two sets of three powers. On the one hand, there is the king, the nobles, and the people; on the other, there is the executive, the legislative, and the judicial. But what has not been generally recognized in the discussions of Montesquieu is that he finds absolutely essential to liberty the existence of a nobility. In fact, it may be said that the whole balance of the constitution depends on the existence of a legislative house of nobles. The essence of the nobility is a system of hereditary privileges, which the peerage is able to defend by having a power of rejection or veto over the representatives of the people. It seems apparent in Montesquieu that although liberty depends on the separation of powers in a political sense, there can be no genuine separation without a mixed form of government. The mixed form of government clearly must be constructed upon the existence of monarchy and a nobility, both of which play a decisive rôle in the state. Their respective rôles are to be played by vesting the executive power in the monarchy and the rights of a strong upper legislative chamber in the nobility, and by giving both the monarch and the nobles a veto against the popular representation. It is obvious that this interpretation of Montesquieu fits the British constitution after a fashion, but hardly the American.

Briefly, the net result of Montesquieu's speculation was to revive the idea of the mixed form of government, and to rejuvenate it by associating it with the idea of the separation of powers.⁷ If the American application of the doctrine is nothing but imitation, one must conclude that our presidency is the monarchic element in the federal constitution, and that the senate represents the aristocratic element, or is a copy of the function of the hereditary

⁶*Ibid.*, II, 373.

⁷Janet, *op. cit.*, II, 377.

nobility. Likewise, the Roman consulate might be likened to the monarchy necessary for the mixed constitution. Yet such analogies are indeed remote. The essential element of monarchy, as Montesquieu recognized, was hereditary succession, and the essential element of a nobility which is able to create a balance in the constitution is a body of distinct privileges. As far as the United States is concerned, the presidency lacks the essential features of monarchy, and the senate lacks the essential idea of an aristocracy. If Montesquieu was correct, the disappearance of aristocracy makes liberty virtually impossible since there can be no balance to the constitution without it, and with the sunset of monarchy the vital hereditary executive must pass. It was only upon the assumption that the British constitution might be created in other situations by artificial means that Montesquieu's conception of liberty could survive.⁸

Under these circumstances, it is easy to perceive why the British of the later eighteenth century were pleased with Montesquieu, and why a veritable cult of the British constitution grew up in England as well as on the continent. The "School of Montesquieu" may be called those who follow *L'Esprit des lois* in their admiration for the English system of government. Blackstone, Paley and de Lolme are the leading figures in this short-lived school of eighteenth-century constitutionalism. Blackstone had no political theory, yet as a follower of Montesquieu he gave England the first

⁸A problem of some difficulty for the construction presented in this paper is the relation of Locke to Montesquieu and the American government. It is probable that Locke influenced our ideas of right and the place of the fundamental law, while Montesquieu suggested some of the principles of the distribution of public power. Locke's emphasis on the principle of popular sovereignty and the right of revolution would, in any case, set him off from the conservative ideas of the mixed constitution. Natural rights preserve the liberty of the individual, while the mixed form of government preserves primarily the liberty of orders. Cf. A. R. Lord, *The Principles of Politics*, (Oxford, 1926), pp. 112ff. A. Esmein, *Éléments de Droit constitutionnel français et comparé*, eighth edition (Paris, 1927), Vol. I, p. 496, notes that Montesquieu was influenced by Locke, but that Locke was merely reflecting the British constitution in his discussion of the separation of powers. Esmein discusses the history of the idea of the separation of powers without taking into account the principle of the mixed constitution. *Ibid.*, I, 493-96. Wright, *op. cit.*, p. 169, observes that such thinkers as Harrington, Locke and Blackstone expounded the theory of the separation of powers before Montesquieu. It might be suggested that, for the most part, Montesquieu and his predecessors thought essentially of social rather than political balance in the constitution.

systematic analysis of the constitution. There is, however, an essential difference between Blackstone and Montesquieu, for Blackstone declares that the executive or the king must be a part but not the totality of the legislature. It was Montesquieu's opinion that to make the executive even a part of the legislature would mean the end of liberty.⁹ They are agreed, however, in ascribing to the executive the function of rejecting or vetoing rather than making determinations of policy. But with Blackstone, the balance of the constitution is found primarily *within* the legislature, since king, lords, and commons were all part of it. As with Montesquieu, the fundamental notion of mutual defense of each part against the others is recognized as the means whereby the balance of the constitution is to be preserved. And as Montesquieu believed, Blackstone considers that titles and ranks are absolutely essential in a well-governed state.

In discussing the British settlement of the seventeenth century, Blackstone is convinced that a true balance between liberty and prerogative has been reached. This was obtained by destroying to a certain extent the prerogative, leaving the people able to defend themselves against its encroachment.¹⁰ Mixed government is not visionary in England; it has been attained. For the executive power of the laws is in a single person, which preserves all the advantages of absolute monarchy; the legislature is entrusted to three distinct powers, each independent of the other: the king, the lords, and the commons, "freely chosen by the people from among themselves." Each branch is armed with a negative power to repel any innovation. But it is most certain that the balance of the constitution comes not from the separation of powers but from the constitutional position of the orders in the state. The separation of powers is but a device whereby the orders may defend themselves.¹¹ "It is highly necessary for preserving the balance of the constitution, that the executive power should be a branch, though not the whole, of the legislative," and either total union or total separation would produce tyranny.¹² The balance of the constitution has preserved the rights of Englishmen

⁹Montesquieu declared that the executive power ought to have a share in the legislative power by the power of rejecting, but if the prince should have part in the legislature by the power of resolving liberty would be lost.

¹⁰Sir William Blackstone, *Commentaries on the Laws of England*, Bk. IV, p. 439.

¹¹*Ibid.*, Introduction, pp. 50-51.

¹²*Ibid.*, Bk. II, p. 154.

against the encroachments of the prince, as has not been the case on the continent.¹³

Blackstone is particularly happy that republican principles were rejected in the settlement of 1689, and also that no countenance was given the idea of Locke that the overthrow of the constitution might reduce the people "almost to a state of nature."¹⁴ He felicitates the British especially on saving titles and dignities, which prevented a new polity from being formed. The right of the people to elect, depose, or punish magistrates is an extremity which is contrary to the balance of the constitution and which must be avoided.¹⁵

De Lolme in his book, *The Constitution of England*, which was first published in French in 1770, makes no contribution to the theory of the mixed constitution. He offers an elaborate and sometimes erroneous analysis of the British constitution, but the principle of the balance and equilibrium of orders in the state is hopelessly interwoven with the more modern principle of the preservation of rights by the separation of powers. With Blackstone, he recognizes the king as a part of parliament,¹⁶ and he insists on the independence of the judiciary in its judgments but not on its independence in terms of governmental structure. As an organization, the judiciary must be subordinate and dependent.¹⁷ The balance of the constitution prevents those popular excesses which have marred the earlier republican governments, and this balance consists in an equilibrium between the power of the people and the power of the crown.¹⁸ The legislature likewise must be divided to check the preponderance of the people.¹⁹ The people or the multitude is unable to come to any intelligent or mature resolution, and on this ground a limited and controlled participation is justified.²⁰

De Lolme's attack on republican government, which was drawn very largely from Greek and Roman sources, shows that both the

¹³*Ibid.*, Bk. I, p. 127.

¹⁴Blackstone, *op. cit.*, Bk. I, p. 213.

¹⁵He refers to the original contract between the prince and subjects which subsists "in all states impliedly, and in our most expressly . . ." Bk. I, p. 233.

¹⁶J. L. de Lolme, *The Constitution of England*, edited by John MacGregor (London, 1853), p. 56.

¹⁷*Ibid.*, pp. 120-21.

¹⁸*Ibid.*, pp. 147-48.

¹⁹*Ibid.*, pp. 159ff.

²⁰*Ibid.*, pp. 172-74.

mixed constitution and the separation of powers have in mind preventing tyranny and the concentration of power. Yet de Lolme can find security and liberty only in a constitution such as the English in which republicanism is subordinated to the class principle of mixed government, to the concentrated executive power vested in the monarch, and to the division of the legislative power between two houses.²¹ The people must elect their representatives rather than having a wild or direct authority in government. The English government is unique in history in that the representatives of the people, because of the constitution, have remained faithful to popular interests; this happy result has been obtained solely by the structure of the government.²²

Yet it must be recognized that de Lolme saw the final result of the English constitution in the liberty of the subject. This liberty was liberty under law, and the security of the rights of the individual. It was the peculiar genius of the School of Montesquieu to see this liberty as the consequence of the mixed constitution, in which all the parts were equally necessary, but in de Lolme perhaps the strong monarchy, deeply engrained in the hearts of the people, is the most necessary of all.²³ In fact, de Lolme's work may be regarded primarily as a defense of the English monarchy. It is this fact above all else which shows the contrast between these ideas and those which dominated the American leaders of the period of the constitution.²⁴ It was to be discovered later that these same liberties might flourish to an even greater degree in republican states under the principle of the separation of powers, and from which the elements of the mixed constitution had been eliminated.

Paley must be mentioned in order to foreshadow the transition which was to take place in this body of doctrine. Paley saw in the British constitution a mixed form of government, and he insisted on the balance of the constitution, but he distinguished be-

²¹de Lolme, *op. cit.*, Bk. II, Ch. X.

²²*Ibid.*, p. 238.

²³de Lolme, *op. cit.*, Bk. II, Ch. XVII.

²⁴*Ibid.*, p. 320: "From the indivisibility of the governing authority (i.e. the executive) in England, a community of interest takes place among all orders of men: and hence arises, as a necessary consequence, the liberty enjoyed by all ranks of subjects. This observation has been insisted on at length in the course of the present work." De Lolme assumes that a strong, united executive can be formed only by having a monarchical form of government.

tween the balance of powers and the balance of interests.²⁵ The veto of the crown is important in preserving the balance of powers, but the process by which the king, the lords, and the commons, *i.e.*, the three estates, check each other constitutes the balance of interests.²⁶ It is clear that the separation of powers is coming more to the front as an independent idea, and that the balance of interests is becoming a question of social policy. The theory of checks is applied in fact both to the separation of powers and the orders in the state. In the older theory it should be observed that the separation of powers is primarily a device whereby the orders may check each other. The principle involved was the maintenance of the mixed form of government, and the mixed form was to be maintained by mutual checks, aided by the separation of powers. On the contrary, in Paley the principle of checks is becoming a device for the maintenance of the separation of powers.²⁷

²⁵William Paley, *The Principles of Moral and Political Philosophy, Works*, Vol. III (Boston, 1811), pp. 379-80. This work was first published in 1785.

²⁶The conflict of interest is thus recognized as one of the central forces of politics. But just as in Montesquieu, the conflict is between those who have privileges and those who have not. Paley remarks (*ibid.*, p. 388) that one of the great services of the House of Lords is "to stem the progress of popular fury."

²⁷*Ibid.*, Bk. VI, Ch. VII. But see especially *ibid.*, pp. 385ff. Paley has a clear idea of the separation of powers, since he declares: "The first maxim of a free state is, that the law be made by one set of men, and administered by another: in other words, that the legislative and judicial characters be kept separate." Cf. Janet, *op. cit.*, II, 402-403.

Soon after Montesquieu there was a decline in the general admiration of the British constitution. Janet assigns three main causes. In the first place, the administration of Walpole spread the idea that the British constitution was tending to return to absolute monarchy. In the second place, the loss of the North American colonies suggested that England was declining. And, in the third place, the new concept of republican liberty which originated in the United States re-oriented continental thinking in its opposition to despotism. The writings of Thomas Paine and *The Federalist* (which was translated into French in 1792) had a great deal to do with the operation of the last cause. Janet, *op. cit.*, II, 403, 703. The chief impact of the new republican doctrines was to eliminate from the concept of liberty the necessity of monarchy and the function of balance performed by the nobility. As a consequence, liberalism in Europe did not imitate English political ideas until in the nineteenth century when parliamentarism was transplanted. For a somewhat different treatment of the influence of the English constitution in relation to French political thought, see Esmein, *op. cit.*, I, 79-85. Esmein takes the position that Montesquieu understood the essential parliamentary features of the British constitution and that parliamentary government was

In the light of the preceding discussion, it can be seen that the doctrine of the mixed constitution was inapplicable in the United States. Montesquieu and Blackstone, however, were without doubt the germinal sources of the doctrine of the separation of powers for the Americans. Because Montesquieu had his principles in mind as a counterweight to despotism, and because Blackstone saw in the balance of the constitution a check on the powers of the king, it was natural that the American fear of the tyrannical executive should find confirmation in the doctrine. Of the two primary sources of the doctrine for the United States, it must be apparent that Montesquieu's formulation was more adapted to American needs, since it was at least stated in more general terms.

The American contribution to the principle seems to be, first, a clear detachment of the doctrine of mixed government from that of the separation of powers, and, second, the evolution of the idea of the mixed form of government in the interpretation of politics as a balance of interests or economic forces and classes. The principle of checks and balances was grafted on to the principle of the separation of powers as a means of sustaining the separation, and the principle of the mixed constitution remained in the idea of the necessity of a senate representing the more conservative economic interests in the state. These developments may be seen in the contrasting doctrines of James Madison and John Adams.

Adams' primary concern in his *Defence of the Constitutions of Government of the United States of America* in 1786 was to sustain the British tradition of the mixed form of government. The separation of powers and the check and balance principle are simply subordinate means whereby the mixed form of government, based on the concept of the state as made up of different orders, can be preserved. While the Constitutional Convention was familiar with his ideas, it is difficult to see that they made much headway against the competing ideas of Madison and others. In other words, Adams' theory no doubt showed the necessity of a senate as a matter of economic conservatism without trenching heavily the idea that the separation of powers was the primary requisite for liberty. Adams succeeded in preserving some of the

consciously rejected by most of the French Revolutionary leaders who understood the system. *Ibid.*, I, 240-43. Cf. Carpenter, *op. cit.*, p. 37, for the position that the Framers of the American constitution saw corruption in the British constitution and its deviation from Montesquieu's principles.

elements of the mixed form of government, without, however, convincing the convention of the ineluctable necessity of the recognition of monarchical, aristocratic,²⁸ and democratic elements in the constitution. What the convention did recognize was the conflict of economic groups, and the danger to conservative interests from democratic attack. Thus the Senate of the United States must be regarded primarily as part of a balance of interests rather than as a part of the separation of powers.²⁹

Adams may be said to have advanced three fundamental principles, all of which support his concept, the historic concept of mixed government. He defends the notion of representation, the separation of the three powers of government, and a balance in the magistracy by having three branches, the king or the president, the upper chamber or the senate, and the chamber of representatives. But it is fundamentally clear that there must be orders recognized in the government for the state to be well-governed, and this implied the existence of an aristocracy as a balance to the force of pure democracy. His foundations of aristocracy were wealth, birth, and education. In contrast with the older view which regarded the House of Lords as holding a balance between the commons and the king, Adams viewed the executive or president as holding the balance between the senate and the house.³⁰

²⁸See Thomas Paine, *The Rights of Man* (1791-1792), Everyman Edition, pp. 62ff, for a criticism of the principle of aristocracy in the British government particularly. On pp. 131ff Paine launches a strong attack against the principles of the mixed constitution. While Paine praises the American constitutions, he rejects the idea of three powers in government. According to his view there are only two: legislative and executive. *Ibid.*, pp. 198, 235.

²⁹It must be observed that for the mixed form of government the balance within the legislature is as important as that between the executive and the legislative branches. See John Adams, *Works*, VI, 429.

³⁰Adams' analysis of the American constitution in which he finds eight different checks and balances shows clearly his preference for the mixed form and that his interpretation starts from this point of view. See *Works*, VI, 467-68. These checks and balances were: (1) the states and territories against the central government, (2) the house and senate against each other, (3) the president against congress, (4) the judiciary against congress, the president and the state governments, (5) the senate against the president, (6) the people against their representatives, (7) the state legislatures against the United States Senate, (8) and the electoral college against the people. Adams felt that the check of the senate on the president was useless and pernicious. He said further: "... here is a complication and refinement of balances which ... is an invention of our own, and peculiar to us." *Ibid.*,

Madison's theory of sound government must be examined both from the viewpoint of his fear of the turbulence of democracy and his conception of the separation of powers.³¹ In seeking a cure for the evils of factions and the struggle of classes which emerge from divergent economic interests, he not only favors a republican state of large area, but also a balance of interest to be embodied in the senate as a part of the legislature. Here the older concept of mixed government has reached a complete transformation. In the tenth number of *The Federalist*, he declares: "The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary operations of the government." The balance of interests is primarily a matter of republican policy; it is a positive principle of good government. His concept of classes is separated entirely from the traditional concept of the function of an aristocracy in the preservation of liberty. The senate serves its purpose in moderating the interaction of the fundamental forces of politics.³²

On the other hand, the separation of powers was a negative principle, a preventive stratagem whereby the tendency of any part of the government to encroach on the others is eliminated. The separation is a principle of internal constitutional structure; it is an elaboration of devices by which each of the three divisions concerned may defend itself against the others. The check and balance system becomes the cause of the preservation of the separation of powers within the provisions of the constitution itself. On July 19, 1787, Madison reports himself as saying to the Constitutional Convention: "If it be a fundamental principle of free government that the legislative, executive, and judiciary powers should be separately *exercised*, it is equally so that they be *independently* exercised. There is the same and perhaps

p. 421, Adams refers to the "mixture of the three powers" in state government, i.e., the two houses of the legislature and the executive. See also John Dickinson, *Administrative Justice and the Supremacy of the Law* (Cambridge, 1927), p. 83 and note 22.

³¹It may be noted, however, that the rise of the idea of popular sovereignty and national sovereignty assisted in the rejection of the mixed constitution. The separation of powers may be reconciled easily with the idea of the ultimate and unitary power of the people, while the mixed constitution can recognize the power of the people only in a limited sense. Cf. George Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 499-500.

³²See Carpenter, *op. cit.*, p. 42.

greater reason why the executive should be independent of the legislature, than why the judiciary should: A coalition between the two former powers would be more immediately and certainly dangerous to public liberty." The executive must be a free agency in relation to the legislature.³³

It is fundamental in the American conception of the separation of powers that the separation be maintained by devices within the Constitution which enable each department to resist the others. The system of checks and balances, drawn from the mixed constitution, is the motivating principle of the separation. *The Federalist* explains that more than a mere paper separation must be provided if a concentration of political power is to be avoided.³⁴ "But the great security against a gradual concentration of the several powers in the same department," says *The Federalist*, "consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interests of the man must be connected with the constitutional rights of the place."³⁵ Here it is explained that since the legislature is the predominating branch in republican governments, it must be divided and the modes of election and principles of action made as widely different as possible.³⁶

³³Sixty-ninth Congress, 1st Session, House Document No. 398, "Documents Illustrative of the Formation of the Union of the American States," p. 412.

³⁴No. 48.

³⁵No. 51. The principle of the separation of powers seems to lead directly to the presidential form of government. There was a strong tendency in France toward what might have become presidential government until the principle of parliamentary government was taken over from the British constitution. Esmein, *op. cit.*, I, 507ff. On p. 530 Esmein denies, however, that parliamentary government violates the principle of the separation of powers. The Swiss federal executive he regards as inspired by the Convention in France and *le Directoire exécutif* of the Constitution of the Year III. *Ibid.*, I, 536.

³⁶This explanation of the bicameral legislature must be balanced against the other and more fundamental explanations which have been adverted to already. Cf. Esmein, *op. cit.*, I, 137-41, for a discussion of the motives which led to the formation of second chambers. He believes that federalism is the fundamental explanation of the United States senate. In other words, federal bicameralism may be explained in a number of ways: by state constitutional experience, by the principles of the mixed constitution, by the idea

In the same number of *The Federalist* (Number 51) an exposition is given of the advantages of federalism in securing moderation in government. In a single republic all the power surrendered by the people is submitted to the administration of a single government, and usurpations are guarded against by a division of the government into distinct and separate departments. In the "compound republic of America" the power surrendered by the people is first divided between two distinct governments, and the portion allotted to each subdivided among the separate departments. Not only will the departments check each other, but the national and local or state governments will also act as mutual hindrances to usurpation. But a further guarantee is to be found in the diversity of interests in the United States, and just as religious rights are protected by the multiplicity of sects so other rights will be protected by the impossibility of a majority combination of interests throughout the country.³⁷

The framers added to the principle of checks and balances the idea of judicial review,³⁸ which theretofore had never been incorporated into any system of government. The judiciary could

of the separation of powers, or by the concept of the process of politics as economic struggle.

³⁷Madison refers to the new American government in *The Federalist* as mixed, but it is clear from the discussion preceding that he meant mixed as between the national and federal or confederate elements in the constitution. This was certainly a novel use of the term "mixed government" and it may have been used with an idea of the propagandist effect the suggestion would have on the American voters of the time. See *The Federalist*, No. XL, in the opening sentence of the number.

In No. 47 of *The Federalist* Madison addresses himself against the charge that there is too much of a blending of the powers of government in the federal constitution. He refutes this argument, not only on the basis of various state constitutions, but also by a particular interpretation of Montesquieu drawn from the British constitution. The result of Madison's argument is in fact to show that there is no conflict between Montesquieu and Blackstone in that the former accepts the membership of the executive in the legislative branch. Madison does not raise the question of similarity or dissimilarity between republican and monarchical and aristocratic institutions. It would seem, then, that he believed the American application of the principle of separation is consistent with the practice and principles of the British constitution.

³⁸See Edward S. Corwin, "The Progress of Constitutional Theory Between the Declaration of Independence and the Meeting of the Philadelphia Convention," *The American Historical Review*, XXX (1925), 511-26, for an account of the development of the concept of judicial power in the United States. Esmein, *op. cit.*, I, 375-76, notes that judicial review was specifically

by means of this power prevent any successful attempt on the part of the other branches of the government to deprive it of its constitutional functions. It was generally assumed that the judiciary was the weakest of the three divisions of government. The older concept of the mixed constitution did not generally regard the judiciary as significant in the forces making for a balance in the government. The enormous importance of giving the judiciary an independent realm of action was recognized, but neither in Montesquieu nor in Blackstone is the principle presented that the judiciary must be armed with judicial review in self-defense. The inclusion of the judiciary within the scope of the checks and balances of the constitution is distinctly an innovation in the theory of the separation of powers.³⁹ The brilliant ability of the American judiciary to defend itself has no doubt been a surprise to members of the higher courts. It was soon discovered under Marshall that the Supreme Court of the United States was not using the principle of judicial review so much to protect the legitimate functions of the judiciary as to carry on the conservative social principles which run throughout the constitution itself. This social conservatism is the political heritage of the mixed constitution, which must be regarded as the eighteenth-century engine *par excellence* for maintaining the historic balance of interests in society.⁴⁰

The political instrument which made it possible to develop the new American interpretation of the older doctrines of constitutional government was the written constitution. Without the written supreme law it would have been possible to establish

rejected in 1790 by the French Revolutionary leaders because of their distaste for the practices of the *parlements* in verifying laws. Such a position is, in the French view, consonant with the separation of powers. It might be observed likewise that the French system of administrative law rests on the Revolutionary principle of the separation of the judicial and administrative powers. *Ibid.*, *op. cit.*, I, 626-48.

³⁹Esmein, *op. cit.*, I, 542 and note 161, denies the view of Duguit that the framers of the Federal constitution made the judiciary independent because of the federal character of the union. Esmein, however, tends to view the position of the American judiciary as a direct outgrowth of Montesquieu. It is obvious that Montesquieu did not have a theory of judicial review even in a germinal sense.

⁴⁰As a generalization it may be said that the fundamental preoccupation of the mixed constitution is to preserve order in the state, while the American separation of powers is primarily concerned with the protection of the rights conceived as fundamental to the individual.

neither the federal system nor the separation of powers. The new constitutional balance was made feasible by this type of constitution, since the internal constitutional devices for securing the separation of powers were an immediate expression of the importance of the fundamental law.⁴¹

The new application of the older doctrine was not only adaptation, for it was also the conscious elimination of older ideas. Monarchy and aristocracy,⁴² so essential in the French and British doctrines of pre-revolutionary times, find no place in the American scheme. Mixed government as a separate conception gradually passed out of existence, leaving behind its principle of checks and balances, and the notion of the bicameral legislature. It stimulated, however, a line of growth from the concept of the state based on competing orders to competing interests balanced by a senate or upper chamber, and to the principle of economic individualism embodied in the practice of American judicial review. In turn, federalism is discovered to be an aid in preserving the balance of interest, while in the doctrine of the separation of powers the judicial veto is added to the historic vetoes of the executive and the upper chamber. It may be said, further, that we have utilized in the United States the separation of powers to obtain the political benefits of the mixed constitution, for which a democratic state necessarily lacks the social ingredients.⁴³

⁴¹The French evolution, in principle, was similar to that of the United States. Article XVI of the Declaration of the Rights of Man and of Citizens declares: "Every community in which a separation of powers and a security of rights is not provided for, wants a Constitution." Paine, *op. cit.*, p. 97. The French Revolution shows a rejection of the principle of mixed government, that is, the destruction of monarchy and aristocracy, but the retention of the separation of powers as a means by which to preserve rights and liberties. Hence, Montesquieu's ideas suffered modification as a result of the French Revolution as well as the American.

⁴²See William H. George, "Montesquieu and de Tocqueville and Corporative Individualism," *The American Political Science Review*, XVI (1922) 10-21; p. 11 gives an interpretation of Montesquieu which emphasizes the corporative character of society rather than simple class privilege. The nobility is viewed as expressing necessary intermediate and subordinate powers. Professor George notes the conflict between Ernest Barker who says that Montesquieu's class divisions are incidental, and Emile Faguet who holds that the central point in Montesquieu is the concept of a hierarchically corporative society made up of *corps intermediares*.

⁴³I am indebted to Professor Edward S. Corwin for the final summary of the import of the problem presented in this paper.

THE MEXICAN POPULATION OF TEXAS

BY H. T. MANUEL

The University of Texas

Introduction

In the southwestern part of the United States there is a large population locally recognized as a more or less distinct group and variously designated as Spanish, Spanish-speaking, Spanish-American, Latin-American, and Mexican. Some of them are descendants of early colonists who came into this southwestern country while it still belonged to Spain, while many at the other extreme are recent immigrants from Mexico. Nearly all of them or of their ancestors came into this region from the South. The home language even of the oldest families is usually Spanish.

Like any large linguistic, racial, or national group, this Spanish and Mexican population is far from homogeneous. This fact makes it difficult to find any designation that can be applied satisfactorily to the whole. In New Mexico, for example, many are descendants of early colonists, and among these there is strong opposition to being called Mexicans. Why should they be known as Mexicans when their ancestors came into New Mexico long before Mexico became a separate nation? Their pride of origin runs back to Spain as the mother country rather than to Mexico. In sharp contrast with these are others in Texas and elsewhere along the border who, because of more recent immigration, look back to Mexico as the mother country and take a justifiable pride in being known as Mexicans.

Other designations also are more or less faulty. The term Latin-American is indefinite, for although it includes both of the groups just mentioned, it includes many others besides. Similarly, the phrase Spanish-speaking is non-definitive and often actually misleading. In a few cases English has become the home language of persons who have Spanish or Mexican ancestry. Moreover, there are many, not only of the Spanish or Mexican group, but among those of other descent, who are bilingual, speaking both English and Spanish fluently.

Despite the difficulty of giving the Spanish and Mexican population a satisfactory name, the group is sufficiently definite to become the object of serious study by the student of social problems.

In fact, one of the important outcomes of such a study is a clearer realization of the heterogeneity of the group.

During the last few years, with the financial assistance of the Fund for Research in the Social Sciences, of The University of Texas, the writer has been engaged in research on problems related to the education of children of Mexican and Spanish descent, particularly in Texas. The first major report of this study was published in 1930 under the title, *The Education of Mexican and Spanish-speaking Children in Texas*.¹ As the title indicates, this book dealt primarily with conditions in Texas. It was expected to serve as a general background to orient the student in the field and to prepare the way for more detailed studies.

This paper is primarily an extension of population data presented in that report. While major attention has again been given to conditions in Texas, some reference is made to other states, particularly those of the Southwest. In like manner some facts are presented dealing with population groups other than Mexican. Finally, brief reference is made to illiteracy, death rate, and wealth in relation to the distribution of the Mexican population.

The main sources of data are (1) reports of the U. S. census (particularly the *Second Series of Population Bulletins* for the 1930 census), (2) various issues of the *Public School Directory* of the Texas State Department of Education, (3) scholastic census rolls in the files of the State Department of Education, (4) a special report made in connection with the scholastic census of 1929 on the home language of scholastics, (5) certain statistics furnished by the Commissioner-General of Immigration, (6) records of the State Department of Health, and (7) records of the State Comptroller.²

¹The University of Texas, 1930.

²Grateful acknowledgment is made to the State Department of Education under the leadership of the late Superintendent S. M. N. Marrs for cooperation in gathering information by means of a special census blank on home language and for access to various records; to Mr. Riley Aiken and Miss Dolores Lozano for counting Spanish names on the census rolls; to members of the staff of the State Comptroller and of the State Department of Health for assistance in securing unpublished data; to Miss Maria Teresa Sánchez, Mr. W. L. Brown, Miss Christine Ellis, Mr. Lee Davenport, and others for assistance in compiling the data; to the Bureau of Research in the Social Sciences for financial assistance.

The United States Census

It will be recalled that reports of the U. S. census carry three major divisions—white, negro, and other races. Prior to 1930, Mexicans were classified as white. In the census of 1930, however, the designation "Mexican" appeared, being defined as "persons of Mexican birth or parentage who were not definitely returned as white or Indian." There are in addition to the group classed as Mexicans a group of foreign-born whites whose country of origin is Mexico and a group of native whites one or both of whose parents came from Mexico. Again there are similar groups whose country of origin is Spain and who speak the same language as that spoken by Mexicans. Moreover, it is clear that many persons who should be classed as Spanish-speaking or Mexican from the standpoint of home language or at least remote national origin have been included in the native white group. A similar point may be made, of course, with reference to native whites of various other national groups, who even in the third generation may be speaking a language other than English; but it is especially true of Mexicans, whose assimilation with English-speaking people has been slow.

Texas and the Southwest

The report of the U. S. census (*Population*, Volume III) shows that the Mexican population of the United States in 1930 was 1,488,501,³ of which 1,422,533 were returned as Mexican and 65,968 as white of Mexican birth or parentage. This constitutes about 1.2 per cent of the total population, a small figure for the country as a whole. However, all of the nearly 1,500,000 except about 150,000 are found in five states of the Southwest—Texas, New Mexico, Arizona, California, and Colorado.

A summary of the population of Texas and other southwestern states showing certain racial and foreign groups is given in Table 1.

In round numbers the total 1930 population of Texas is 5,800,000, about 150,000 more than California, its nearest competitor in this group of states. Nineteen per cent of its population is foreign

³As above defined. Obviously, many persons of Mexican origin beyond the first and second generations are not included in this figure.

TABLE 1
Foreign and Racial Groups in the Southwestern States
U. S. Census of 1930

A. Number

State	Total Population	Foreign ¹ White Stock	Mexican ² Stock	Foreign White Except Mexican	Negro	Other Races ³
Texas	5,824,715	1,109,974	703,164	406,810	854,964	2,579
New Mexico	423,317	88,342	61,960	26,382	2,850	29,372
Arizona	435,573	168,304	118,809	49,495	10,749	46,273
California	5,677,251	2,478,125	388,138 ⁴	2,089,987	81,048	187,943
Colorado	1,035,791	349,687	58,749	290,938	11,828	5,170
Utah	507,847	181,497	4,678	176,819	1,108	6,772
Nevada	91,058	36,945	3,261	33,684	516	6,027
Total	13,995,552	4,412,874	1,338,759	3,074,115	963,063	284,136

B. Per cent of Total

Texas	100	19.1	12.1	7.0	14.7	0.04
New Mexico	100	20.9	14.6	6.2	0.7	6.9
Arizona	100	38.6	27.3	11.4	2.5	10.6
California	100	43.6	6.8	36.8	1.4	3.3
Colorado	100	33.8	5.7	28.1	1.1	0.5
Utah	100	35.7	0.9	34.8	0.2	1.3
Nevada	100	40.6	3.6	37.0	0.6	6.6
Total	100	31.5	9.6	22.0	6.9	2.0

¹Including foreign born and native born of foreign or mixed parentage. Including also Mexicans separately classified.

²Obtained by adding Mexicans, foreign born whites from Mexico, and native born whites having one or both parents born in Mexico.

³Not including Mexicans.

⁴175,601 in Los Angeles County alone.

white stock of the first or second generation.⁴ The largest single division of the foreign white stock is that of Mexican origin, 12.1 per cent of the total population. Negroes constitute 14.7 per cent of the total, while races other than white and negro account for less than one-tenth of 1 per cent of the total.

In contrast with Texas no other state of the Southwest has so small a proportion of foreign white stock in the first and second generations, nor has any of the other six states so small a proportion of "other races." On the other hand, Texas has a much larger proportion of negroes, and in absolute numbers has nearly eight times as many negroes as all the other states of the group. Moreover, it has more than one-half of the total number of Mexicans, although the percentage is not as great as that of New Mexico or Arizona.

⁴It should be noted that the foreign white stock enumerated in the U. S. census includes only the foreign born and the native born of foreign or mixed parentage. Later in our discussion we shall attempt to go a little farther back in our estimates.

The Population of Texas

A further analysis of the 1930 population of Texas on the basis of the U. S. census is given in Table 2. A graphical summary is presented in Figure 1.

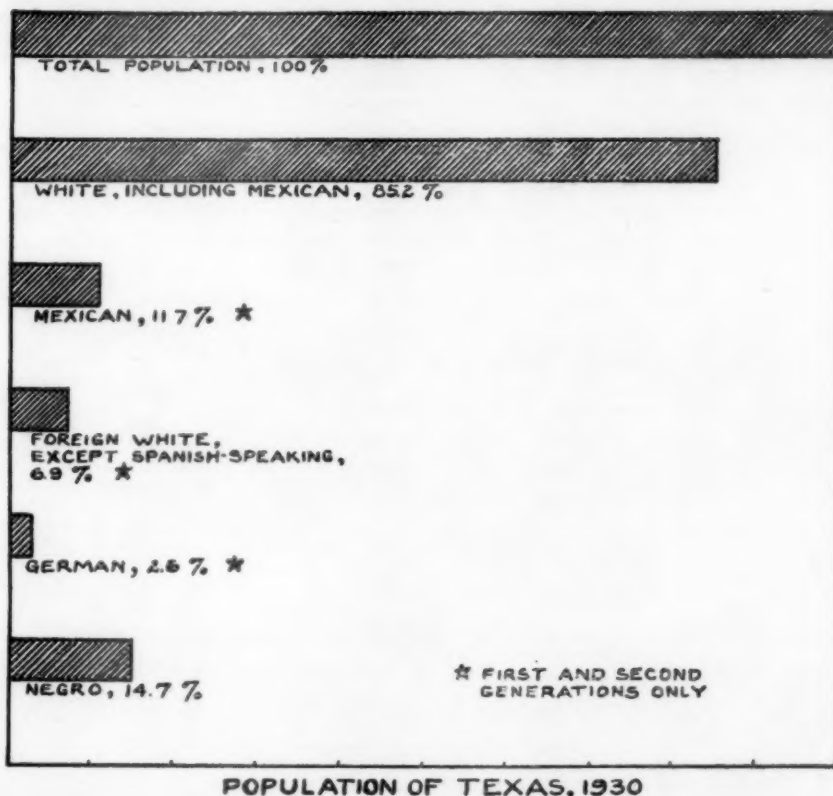


Fig. 1.—Analysis of population of Texas, 1930.

When the Mexican group is included in the white tabulation, the white population is 85.2 per cent of the whole. The Spanish-American people, of whom nearly all (in Texas) are of Mexican origin, number a little more than 700,000 or 12.1 per cent of the total population, and many (apparently all if enumerators followed the directions given) of the third generation and beyond are not included in this figure. Other foreign elements besides those from Mexico and other Spanish-speaking countries number a little more than 400,000 or 6.9 per cent of the total population.

TABLE 2

Population of Texas, U. S. Census, 1930

	Number	Per Cent of Total
Total Population	5,824,715	100
1. White	4,283,491	73.5
a. Native white (includes many from non-English-speaking homes) ¹	4,185,495	71.9
b. Foreign white stock: native white of foreign or mixed parentage plus foreign-born white (by coun- try of birth)	426,293	7.3
(1) England, Scotland, and Wales	38,970	0.7
(2) Northern Ireland, and Irish Free State	22,921	0.4
(3) Norway, Sweden, and Denmark	24,816	0.4
(4) Netherlands, Belgium, and Switzerland	9,544	0.2
(5) France	10,185	0.2
(6) Germany	153,362	2.6
(7) Poland	14,369	0.2
(8) Czechoslovakia	48,920	0.8
(9) Austria, Hungary, and Yugoslavia	13,963	0.2
(10) Russia	14,455	0.2
(11) Lithuania, Rumania, Greece, Palestine, and Syria	9,859	0.2
(12) Italy	21,651	0.4
(13) Spain, West Indies, Central and South America	3,118	0.1
(14) Canada	14,766	0.3
(15) Mexico	19,483	0.3
(16) All other countries	5,911	0.1
(17) Approximate total of Span- ish-American group in above	22,601	0.4
(18) Approximate total of all for- eign white stock except Spanish-speaking	403,692	6.9
2. Negro	854,964	14.7
3. Other Races	686,260	11.8
a. Mexican	683,681	11.7
b. All Others	2,579	0.04
4. Total Spanish-American group ² (Mexi- cans, foreign born whites from Mexico, Spain, West Indies, and Central and South America, and native whites hav- ing one or more parents from these countries)	706,282	12.1
5. Total foreign white stock including Mexi- can, 1930	1,109,974	19.1
6. Total foreign white stock including Mexi- can, 1920	805,903	17.3
7. Total foreign white stock including Mexi- can, 1910	601,898	15.5
8. Foreign born white population exclusive of those born in Mexico, 1930	95,704	1.6
9. Foreign born white population exclusive of those born in Mexico, 1920	110,867	2.4

¹Comment of present writer.²This is only approximate, of course. It is probable that a small number of the immigrants counted here do not speak Spanish.

Of these, the German group is much the largest, aggregating a little more than 150,000 or 2.6 per cent of the total population. The Czechs stand next with almost 50,000, but less than 1 per cent of the total.

The trend over a number of years in the number of the foreign born in certain of the larger groups is shown in Table 3. It will be remembered that the World War disturbed the situation between 1910 and 1920, particularly in the matter of European boundaries, and that for some years prior to the last census immigration restrictions have been rather severe.

TABLE 3

Number of Foreign Born Whites in Texas from Certain Countries
U. S. Census, 1860-1930

	1860	1870	1880	1890	1900	1910	1920	1930
Mexico	12,443	22,510	43,161	51,559	71,062	124,238	249,652	3,692 ¹
Germany	9,427	23,976	35,347	48,843	48,295	44,917	31,062	25,913
Czecho- slovakia ²							12,819	12,282
Italy	67	185	539	2,107	3,942	7,190	8,024	6,550
France	1,883	2,226	2,653	2,730	2,025	1,811	2,544	1,792
Poland	783	448	995	1,591			5,047	4,589
Russia	42	62	279	977	2,259	5,736	7,057	5,467

¹In the 1930 census most Mexicans are listed separately; 603,601 foreign born and native born of foreign or mixed parentage are listed.

²No figures from 1860 to 1910.

The mother tongue of the foreign white stock in Texas for some of the larger groups is indicated in Table 4. This table does not include persons of the third generation and beyond.

TABLE 4

Mother Tongue of Foreign White Stock in Texas
U. S. Census, 1920

(Certain large groups only)

	Number	Per Cent
Spanish	401,343	49.8
German	171,197	21.2
Czech	49,929	6.2
Italian	20,384	2.5
Swedish	13,322	1.7
Polish	13,043	1.6
French	10,670	1.3
Russian	5,090	0.6
Total foreign stock, including above and others	805,903	100.

Immigration and Emigration

Within the last few years there has been a considerable movement of Mexicans back across the Rio Grande without a corresponding migration in this direction. Table 5 shows the number of immigrant aliens admitted to the United States from Mexico and emigrant aliens departed from the United States to Mexico during the years 1930-1932, inclusive.⁵ The trend is shown graphically in Figure 2.

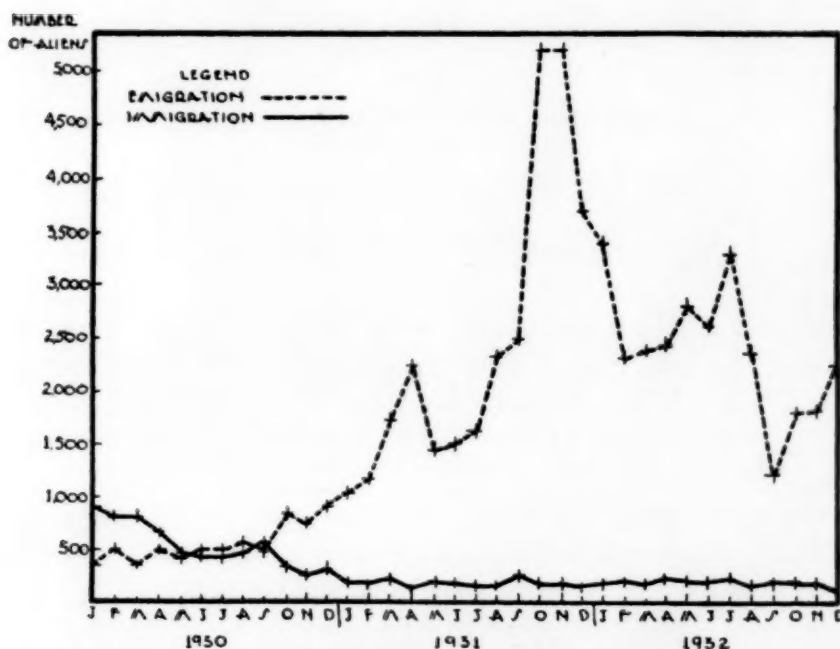


Fig. 2.—Immigrant Aliens Admitted to the United States from Mexico and Emigrant Aliens Departed for Mexico, 1930-32.

According to Table 5, the number of aliens departed from the United States for Mexico exceeded the number of aliens admitted from Mexico by about 56,000 during the three-year period, 1930-1932. Since the Mexican population in Texas is more than half

⁵The data are compiled from tables kindly furnished by the U. S. Commissioner General of Immigration, December 3, 1931, and February 21, 1933. The writer is aware of questions concerning the validity of figures on immigration and emigration to Mexico but believes these figures to be the best available. For a critical discussion of this point, see Taylor, Paul S., *Migration Statistics*, University of California Publications in Economics, Vol. 6, No. 3, pp. 237-255, 1929.

TABLE 5

Immigration from and Emigration to Mexico, 1930-1932¹

PERIOD	Immigrants from Mexico	Immigrants to Mexico
1930		
January	915	345
February	825	497
March	808	367
April	684	496
May	576	378
June	406	439
Total, 6 months	4,114	3,522
1930		
July	398	465
August	425	586
September	588	574
October	346	851
November	239	768
December	271	928
Total, 6 months	2,267	4,172
1931		
January	182	1,066
February	174	1,190
March	201	1,790
April	149	2,276
May	195	1,920
June	165	2,028
Total, 6 months	1,066	10,270
1931		
July	134	2,114
August	173	2,305
September	258	2,497
October	184	5,201
November	162	5,214
December	170	3,723
Total, 6 months	1,081	21,054
1932		
January	185	3,402
February	194	2,337
March	147	2,399
April	204	2,440
May	188	2,807
June	172	2,635
Total, 6 months	1,090	16,020
1932		
July	210	3,292
August	156	2,383
September	205	1,205
October	203	1,858
November	183	1,871
December	154	2,274
Total, 6 months	1,111	12,883
Grand total 1930-1932	10,729	66,921

¹A note covering part of the period and presumably applicable to all the period, states that "practically all of these arrivals and departures were aliens of the Mexican race."

that of the seven southwestern states listed in Table 1, it is probable that about half of the 56,000 loss in population may be charged to Texas. For the country as a whole, the loss is less than 4 per cent of the total. While no one knows how long this backward movement to Mexico will continue, there is some indication that the peak has been passed. Even if it should carry twice the number already departed, it would not at all solve the problem of the Mexican immigrant.

Distribution of Population

The distribution of Mexicans of the first and second generations throughout the state is shown in Figure 3. This figure is based on the population by counties. The location of the dots within a county is not significant. Figure 4 gives similar information concerning foreign white stock (except Mexicans) of the first and second generations. The letters within a county in Figure 4 show the dominant groups in some of the counties.

From the map it is clear that Mexicans of the first and second generations live in greatest numbers in Central Texas and along the Rio Grande. In smaller numbers they are scattered pretty well over the entire state. Other non-English-speaking or foreign groups are found in greatest numbers in the large cities, in Central Texas, and in a group of counties extending north, east, and south of Travis. The percentage of Germans is relatively highest in Austin, Comal, DeWitt, Fayette, Gillespie, Guadalupe, Kendall, Lee, and Washington counties, and of Czechs in Austin, Burleson, Fayette, Lavaca, and Wharton counties.

Since social and educational problems in Texas are complicated by a large negro population, the location of that population is shown in Figure 5. In general the counties having a large negro population are located in East Texas, and with the exception of a few where the populations overlap, these counties do not have large non-English-speaking or foreign groups. The overlapping is greatest in the large cities and in a tier of counties running from Central Texas toward the coast.

The Scholastic Population

The ratio of children of ages 6 to 17 (called "scholastics" in the census made by the State Department of Education) to the total population is shown in Table 6. The general decrease of the percentage between 1920 and 1930 is worthy of note.

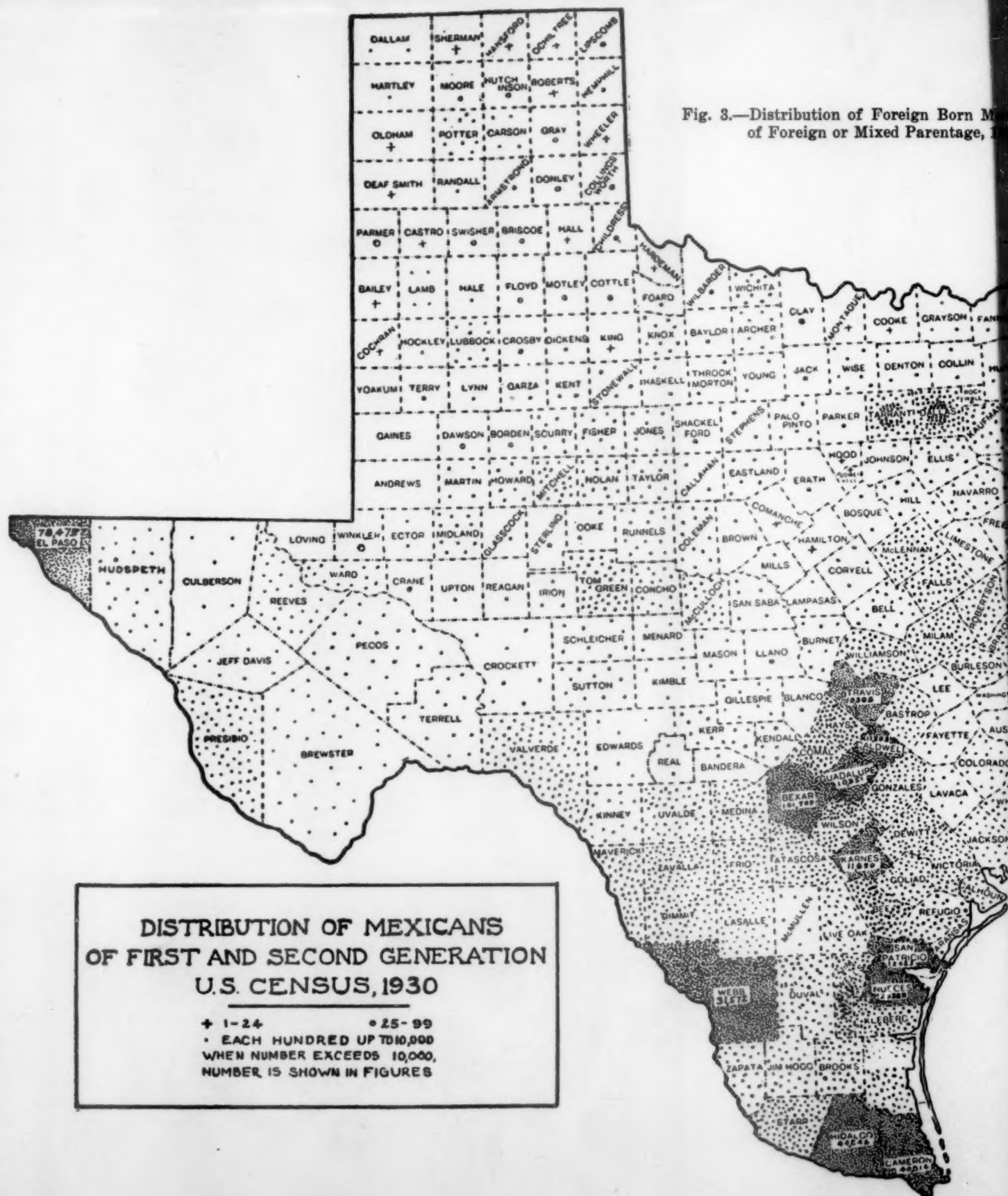


Fig. 3.—Distribution of Foreign Born Mexicans of Foreign or Mixed Parentage, 1930

Fig. 3.—Distribution of Foreign Born Mexicans and Native Born Mexicans of Foreign or Mixed Parentage, 1930.

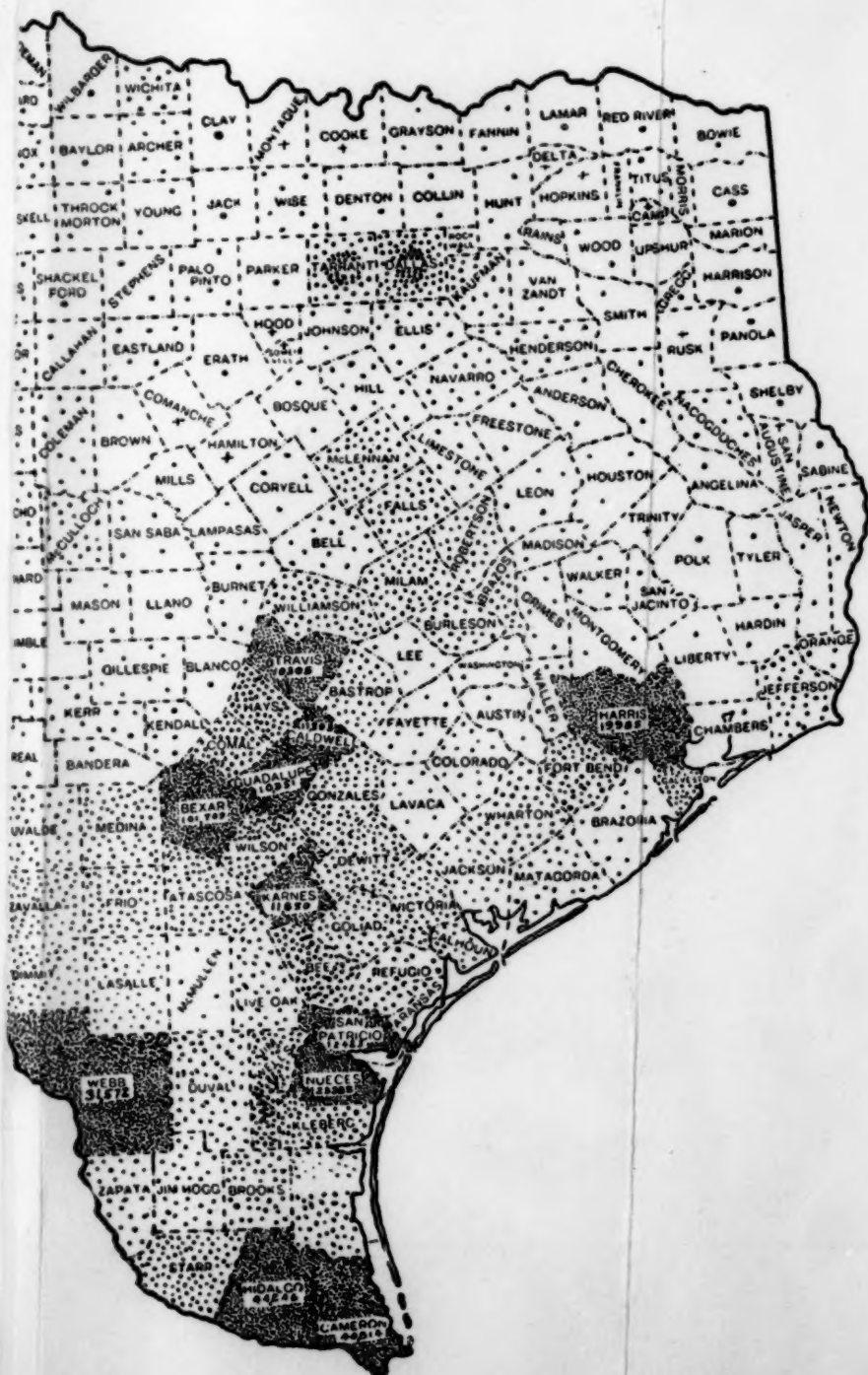


TABLE 6

Children 6-17 in Relation to Total Population
U. S. Census

	1920 Census		1930 Census	
	Number	Per Cent	Number	Per Cent
Total population, all ages.....	4,663,228	100	5,824,715	100
All children ages 6-17, inclusive.....	1,294,986	27.8	1,496,039	25.7
Native white of native parentage, total	3,112,262	100	3,857,198	100
Native white of native parentage, ages 6-17	893,647	28.7	1,015,649	26.3
Foreign born white and native white of foreign or mixed parentage, total.....	805,903	100	426,293 ¹	100
Foreign born white and native white of foreign or mixed parentage, ages 6-17	187,910	23.3	59,615 ¹	14.0
Negro, total	741,694	100	854,964	100
Negro, ages 6-17	212,749	28.7	222,441	26.0

¹In 1930 the U. S. census classified Mexicans in a separate group; hence the greatly decreased figures here.

At this point the discussion will turn from the U. S. census to the scholastic census made by the State of Texas each year. Since 1930, children of ages 6 to 17, inclusive, have been enumerated in the scholastic census. For several years previous to that time the lower limit had been 7. In March of each year children of scholastic age (as of September 1 of that year) are enumerated by census takers under the direction of the local board of education in each district. Eventually the census rolls reach the State Department of Education and the total number of children enumerated becomes the basis for the distribution of the per capita appropriation (\$17.50 in 1930) from the state available school fund.

It is obvious that the incentive for enumerating every child of the designated ages is very great. In fact, it has been charged that census rolls in various districts have sometimes been padded with names of children who did not exist or who were not entitled to be on the census rolls of the districts in which they were listed.* The United States Census furnishes some check on the accuracy of the scholastic census, but not a complete check. In the first place, the dates of the two censuses and the dates from which ages are computed do not coincide—at least they did not in 1930. The U. S. census of 1930 was taken in April, the scholastic census in March; in the U. S. census the ages are as of April 1, in the scholastic census as of September 1. Again, the high per capita payment

*See for example the *Report of the State Superintendent of Public Instruction* for 1920-24, pp. 141 ff.

to a school district for each name on the census rolls probably results in greater diligence in some instances in getting every available name.

The total number of scholastics reported by the *Public School Directory* of the State Department of Education for 1930 is 1,563,595. The U. S. census of 1930, on the other hand, lists a population of only 1,496,039 for the same ages. In other words, the scholastic census exceeds the U. S. census by 67,556 (4.5 per cent of the total). Probably we may assume, for reasons stated in the preceding paragraph, that the true scholastic population lies between the two.

It seemed desirable to find out where the discrepancies between the U. S. census and the scholastic census were greatest. Accordingly, a comparison was made by counties between the actual scholastic census total and an *estimated* U. S. census total. The U. S. census tables available for the several counties listed the population by five-year periods only (5-9, 10-14, and 15-19) within the range in which our interests lay. It was decided, therefore, to estimate the population of children of ages 6 to 17 by taking the sum of four-fifths of the first, all of the second, and three-fifths of the third age group. When applied to the state as a whole, this method gave a total within 54 of the actual number listed in the U. S. census tables. (A finer division of ages for the state as a whole enabled us to find the actual *state* total for ages 6-17.) Moreover, the sum of all our county estimates came within 43 of the actual state total. Our method of estimate, therefore, may be regarded as satisfactory for large populations; at the same time in a given county there may be a large error.

Table 7 gives a summary of the results of this comparison of scholastic census totals and estimated U. S. census totals for ages 6 to 17 by counties.

According to our count of Spanish names in the 1930 census, there were 75 counties (29.5 per cent of the 254 counties of the state) in which the number of Spanish-American (Mexican) children was equal to at least 10 per cent of the entire scholastic population. In the same census, there were 88 counties (34.6 per cent of all) having a negro scholastic population equal to 10 per cent or more of the total scholastic population. They are the counties having relatively large Mexican and negro populations. Figures for other national and racial groups are not available.

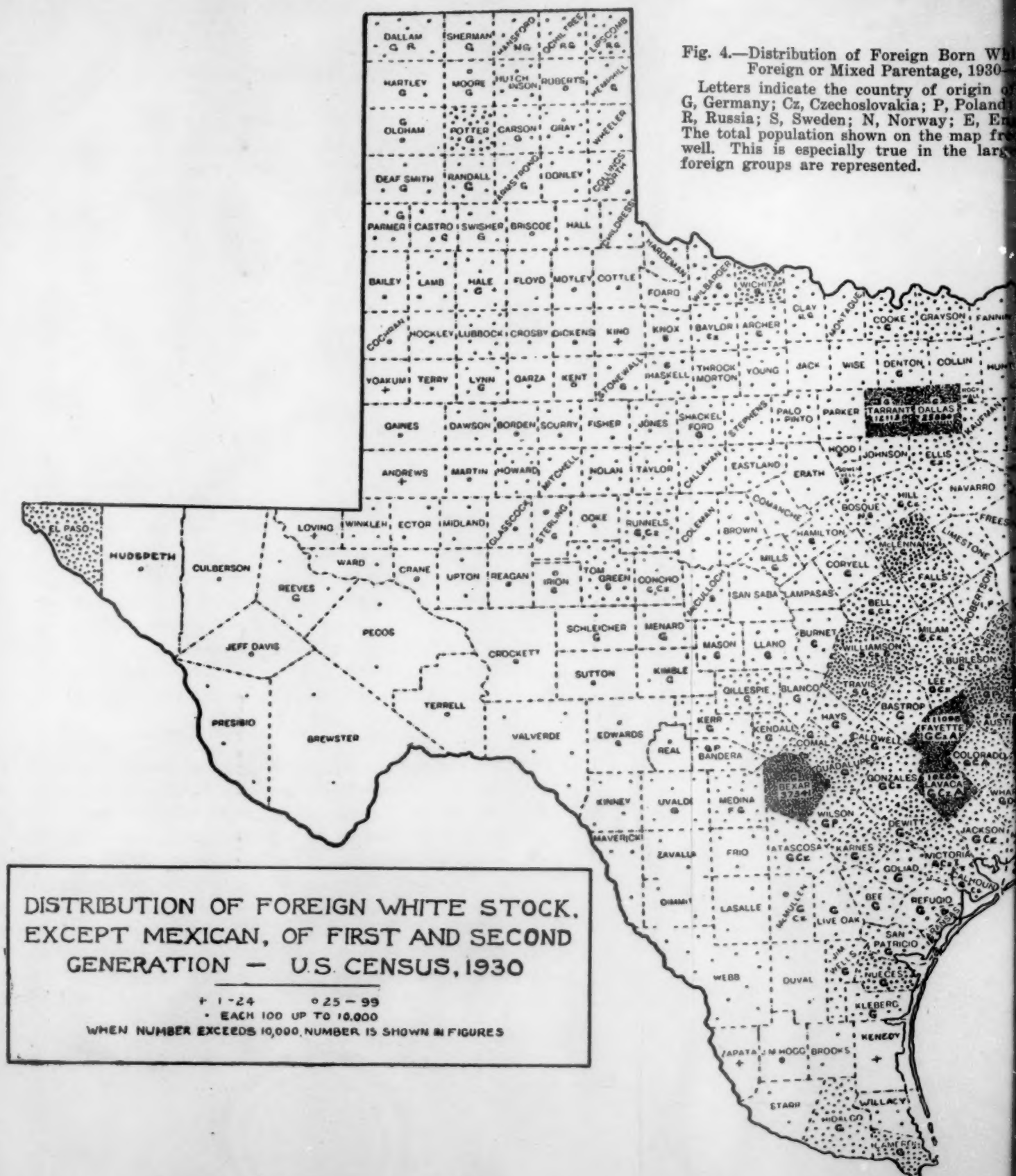


fig. 4.—Distribution of Foreign Born Whites and Native Born Whites of Foreign or Mixed Parentage, 1930—Not Including Mexicans.

Letters indicate the country of origin of some of the dominant groups: , Germany; Cz, Czechoslovakia; P, Poland; A, Austria; I, Italy; F, France; , Russia; S, Sweden; N, Norway; E, England; Ir, Ireland; D, Denmark. The total population shown on the map frequently includes other groups as well. This is especially true in the larger cities, where usually various foreign groups are represented.

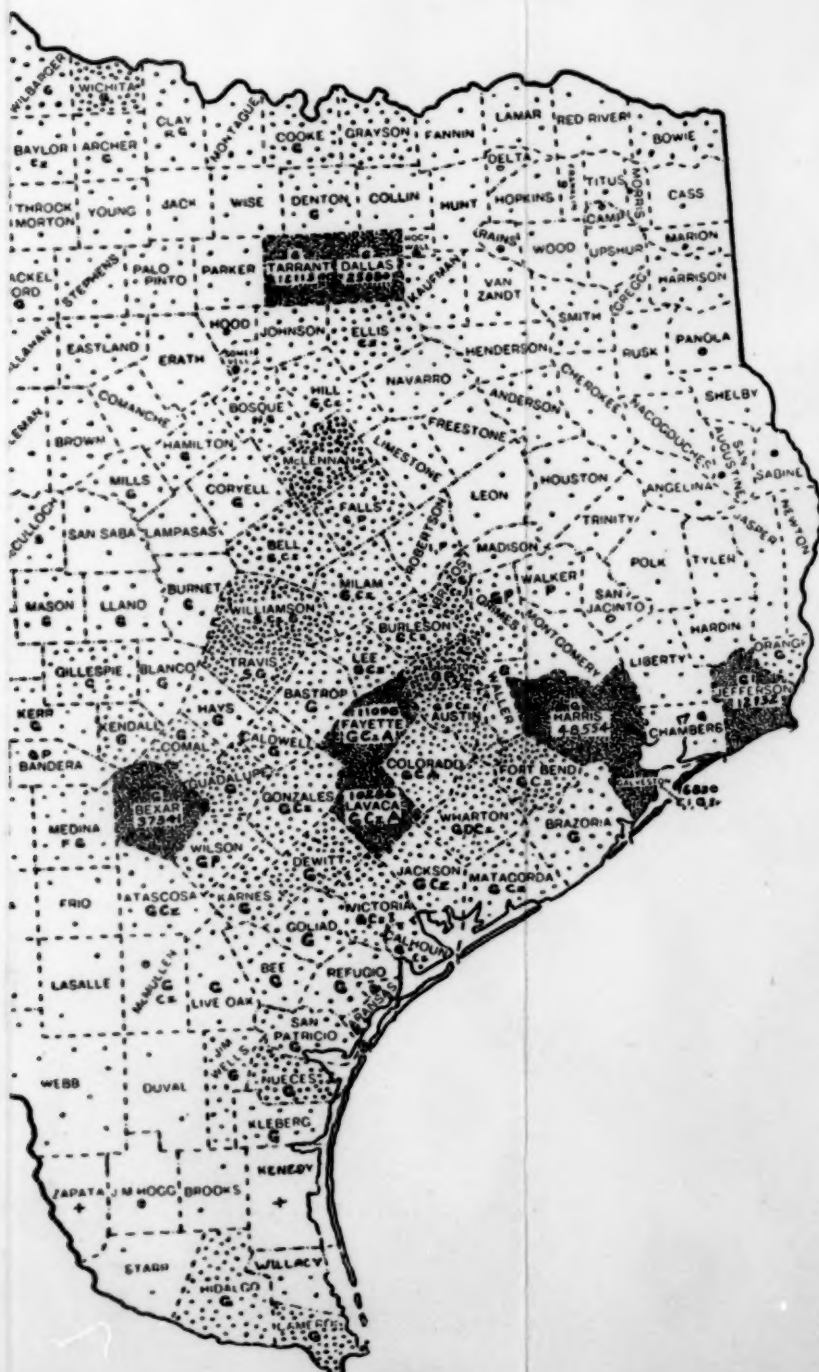


TABLE 7

Comparison of Scholastic Census Totals with Estimated United States Census Totals, Ages 6-17, Census of 1930

	Scholastic Census Smaller than Estimated U. S. Census		Scholastic Census less than 5% Greater than Estimated U. S. Census		Scholastic 5% or More Greater than Estimated U. S. Census		Total	
	No.	Per Cent	No.	Per Cent	No.	Per Cent	No.	Per Cent
1. Total numbers of counties —	76	29.9	83	32.7	95	37.4	254	100
2. Number of counties having Spanish-American scholastics at least 10% of total scholastics	32	42.7	19	25.3	24	32.0	75	100
3. Number of counties having negro scholastics at least 10% of total scholastics	13	14.8	29	33.0	46	52.2	88	100
4. Number of counties having neither Spanish - American nor negro scholastics at least 10% of total scholastics	37	33.6	42	38.2	31	28.2	110	100

One may easily see from the summary in Table 7 that the tendency for the scholastic population to exceed the estimated U. S. census population of the same ages is greatest in the counties having a relatively large negro population. On the whole, in the counties having a relatively large Mexican population, the scholastic population shows nearly as great a tendency to be less than as it does to exceed the estimated U. S. census population.

Home Language and Scholastics

It is not possible to secure directly from the returns of the 1930 and preceding scholastic censuses the number of scholastics belonging to any national or linguistic group. As stated earlier, however, a special supplementary blank was used in the 1929 enumeration for the purpose of securing a classification of white scholastics by home language, "the language generally used when parents and children talk to each other at home." In addition the Spanish names have been counted on the rolls of the 1928 and 1930 scholastic censuses and on the available rolls of the 1922 scholastic census.⁷ The count of Spanish names represents roughly the number of Mexican and Spanish-American children on the census rolls.

⁷For the 1922 and 1928 counts, see Manuel, H. T., *The Education of Mexican and Spanish-Speaking Children in Texas, 1930.*

Unfortunately, the returns from the special supplementary inquiry of 1929 were incomplete, and some were obviously in error—for example, reporting many more than the total number recorded in the *Public School Directory*. Table 8 contains a summary of the results which appeared to be usable for this particular table. It will be seen that nearly 79 per cent of the total number of white scholastics are included.

TABLE 8
Number of White Families and Scholastics
1929 Scholastic Census
(Part of the State Only)

Home Language	No. of Families	No. of Scholastics	Scholastics per Family	Per Cent No. of Scholastics Is of Total
English	368,096	757,731	2.06	81.1
Spanish	63,262	141,861	2.24	15.2
German	6,143	13,602	2.21	1.5
Czech or Bohemian	4,482	10,950	2.44	1.2
Polish	1,501	4,152	2.76	.4
Italian	1,104	2,775	2.51	.3
French	1,066	2,307	2.16	.2
Russian	55	105	1.90	—
Others	548	1,108	2.02	.1
Total	446,257	934,591	2.09	100.0
Per cent of Total White Scholastic Population of State				78.8

Table 8 reveals the same general situation as is shown by a study of the general population table (Table 2) already presented. That is to say, the Spanish-speaking group is far the most numerous of the foreign language groups, with the Germans and Czechs, respectively, next in order.

A summary of the scholastic population for 1930 is shown in Table 9. This gives (a) the number of Mexican and other Spanish-American children as shown by the Spanish names on the census rolls in the office of the State Superintendent of Public Instruction;⁸ (b) the number of whites, the number of negroes, and the total scholastic population as recorded in the 1930-1931 *Public School Directory*; and (c) the number of whites other than Mexicans and other Spanish-Americans as obtained by subtracting our count of Mexicans and other Spanish-Americans from the *Directory* totals. Table 9 includes comparative figures for 1922 and

⁸The count was made by Miss Dolores Lozano and Mr. Riley Aiken.

Fig. 5.—Distribution of Negroes, 1930.

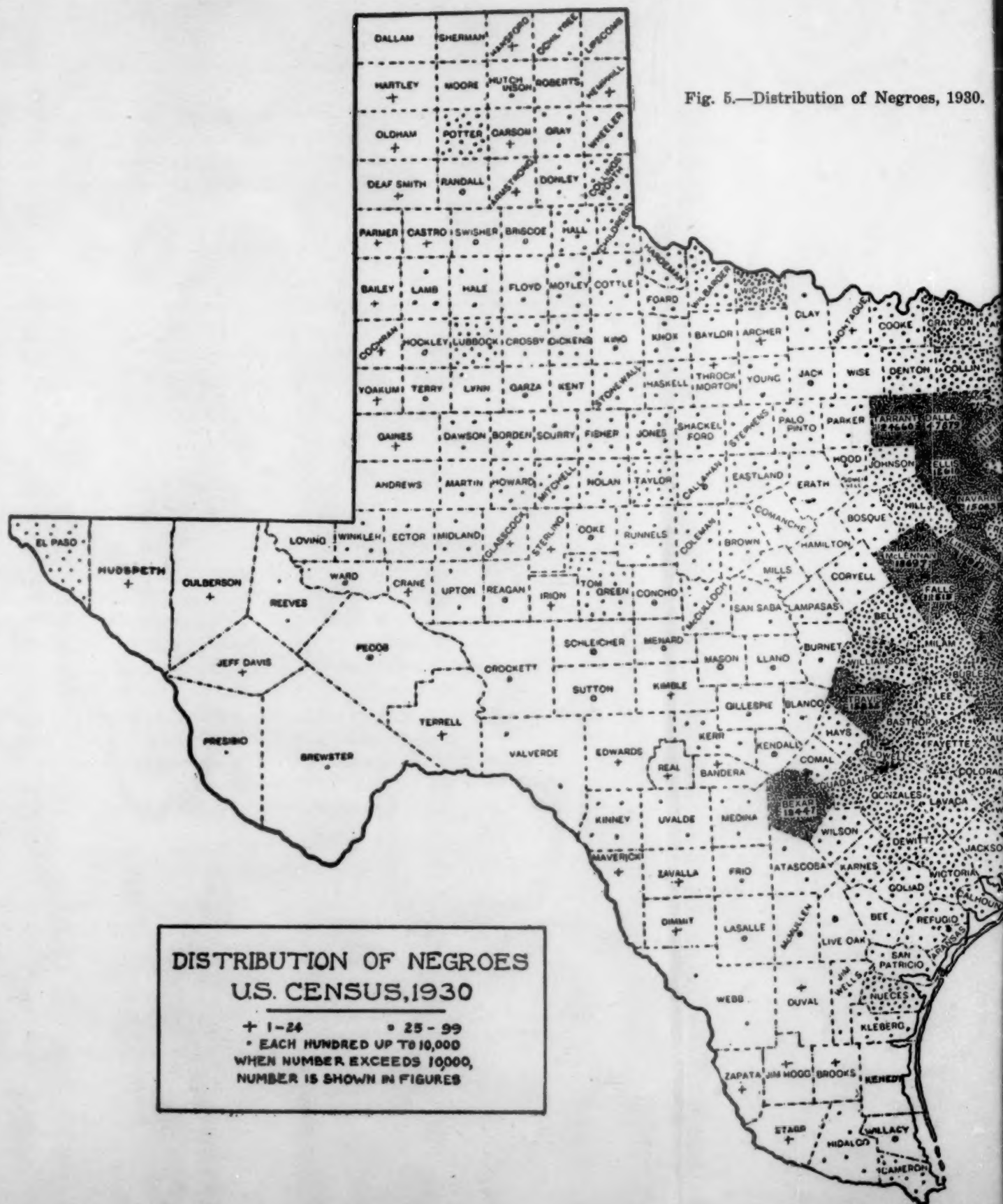


Fig. 5.—Distribution of Negroes, 1930.



1928. Unfortunately, the figures for national groups other than Mexican are not available. Our original tables distributed the population by counties, but there has been so little change from the figures published for 1928⁹ that the detailed table has been omitted.

TABLE 9
Scholastic Population

	Mexican ¹	Other White	Total White	Colored	Grand Total
1930, Ages 6-17—No.	208,517	1,096,863	1,305,380	258,215	1,563,595
Per cent	13.3	70.2	83.5	16.5	100
1930, Ages 7-17—No.	187,940	1,004,305	1,192,245	236,382	1,428,627
Per cent	13.2	70.3	83.5	16.5	100
1928, Ages 7-17—No.	182,489	986,947	1,169,436	235,988	1,405,424
Per cent	13.0	70.2	83.2	16.8	100
1922, Ages 7-17— (Part of state only) ² Per cent	10.5	71.6	82.1	17.9	100

¹Including other Spanish-Americans.

²Since 26 counties are lacking, only percentages are given in this item of the table.

In round numbers there were in 1930 about 200,000 Mexican children¹⁰ and 250,000 colored children of school age in Texas. These constituted 13.3 per cent and 16.5 per cent, respectively, of the total scholastic population. Between 1928 and 1930 the Mexican scholastics increased a little less than 3 per cent, the other white scholastics a little less than 2 per cent, and the colored scholastics less than one-fifth of 1 per cent.

The distribution of Mexican scholastics by age and sex is shown in Table 10. According to this table, there are nearly twice as many Mexican six-year-olds as seventeen-year-olds; the total number of boys exceeds the total number of girls; and more of the children live in independent districts than in common school districts.

Some of the Larger Groups

It will next be in order to bring together various lines of evidence and arrive at final estimates on some of the larger national and linguistic groups.

⁹Manuel, H. T., *op. cit.*

¹⁰A few of the children thus classified are not, strictly speaking, of Mexican extraction, but the error is not great in using this convenient and rather general designation.

TABLE 10
Mexican Scholastic Distribution by Ages, 1930

Age	Male	Female	Total
6	10,586	9,991	20,577
7	10,487	10,033	20,520
8	11,783	10,870	22,653
9	10,930	10,447	21,377
10	10,699	10,105	20,804
11	8,586	7,953	16,539
12	8,889	8,131	17,020
13	7,783	7,253	15,036
14	7,594	7,112	14,706
15	7,323	6,984	14,307
16	6,882	6,655	13,537
17	5,907	5,534	11,441
Grand Total			
6-17	107,449	101,068	208,517
7-17	96,863	91,077	187,940
Independent Districts			
6-17	73,876	70,938	144,814
7-17	66,465	63,875	130,340
Common School Districts			
6-17	33,573	30,130	63,703
7-17	30,398	27,202	57,600

The information concerning the Mexican and Spanish-speaking group is extensive, but figures are lacking on the number of Mexican origin who are native born of native parents, and the percentage of the entire group who still use Spanish as the home language is uncertain. Before English-speaking settlers came to Texas there were Mexicans in considerable numbers in the state. As early as 1870, two generations ago, the U. S. census listed more than 20,000 foreign born Mexicans in Texas. Certainly then a large number now are native born citizens of native parents. In the U. S. census of 1930 the Mexican group (including a small number of Spanish-Americans) in the first and second generations was found to be 12.1 per cent of the entire population. In the scholastic census, on the other hand, the children having Spanish names were 13.3 per cent of the entire scholastic population. It has been shown (Table 6) that the children of ages 6-17 in the population of foreign stock have a smaller ratio to the total population than do native children of native parentage. Evidence presented makes it seem unlikely, too, that the *relative* number of Mexican children reported in the scholastic census is on the average increased greatly by padding. Furthermore, it is clear that children who are regarded as Mexican but who are of mixed parentage have not been counted as Mexican if their names were not such as to identify

them. In working over the 1928 scholastic census we estimated our count of Mexican names to be about 2.5 per cent too low.¹¹ Therefore, it would seem that the proportion of the total population which is of Mexican or other Spanish-speaking origin is as large as 13.6¹² per cent (roughly 14 per cent) of the total population. This would mean a Mexican population of about 790,000 in 1930, of which about 85,000 would be native born of native parents. This is probably a conservative figure.

In the 1928 scholastic census the group having Spanish names represented 15.6 per cent of the total white scholastic population; in 1930, 15.9 per cent of the total. In 1929 the number of scholastics said to have Spanish as the home language was 15.2 per cent of the total population in the part of the state for which figures were available. Apparently, then, although the figures for different counties are somewhat variable, nearly all the population of Mexican and Spanish-speaking origin still speak Spanish at home. Other evidence points in the same direction. Probably, as an outside figure, not more than 2 or 3 per cent have English as the home language. It is well known, of course, that many speak both Spanish and English outside the home.

In 1930 Texas had about 150,000 Germans of the first and second generations. They constituted 2.6 per cent of the total population. It is impossible to determine accurately the number who are native born of native parents, but it is certain that the number is large. Probably many have come to Texas from other states, and of course many have been born here. As early as the U. S. census of 1870 there were in Texas more than 20,000 foreign born persons from Germany, and in 1890, the census year in which the number of foreign born from Germany was largest, nearly 50,000.

The extent to which German is still the home language is uncertain. Our 1929 survey of scholastics (for part of the state only) showed only 1.5 per cent having German as the home language. This is in contrast with the 2.6 per cent which, according to the U. S. census, represents Germans of the first and second

¹¹Manuel, H. T., *op. cit.*, p. 41.

¹²This percentage (13.6) should be compared with the percentage (12.1) of Mexican stock (first and second generations) given in Table 1. In New Mexico the difference is much larger. On the basis of school enrollment (Annual Financial and Statistical Report of State Superintendent of Public Instruction of New Mexico for 1931-32) it appears that about one-half of the population of New Mexico is of Spanish descent whereas only 14.6 per cent (Table 1) is classified by the U. S. census as of Mexican stock.

generations in Texas. An examination of some of the counties having the larger German groups shows the U. S. census percentage sometimes above and sometimes below the percentage of scholastics said to be from German-speaking homes in those counties. While a part of the difference in the total percentages is probably the result of errors in the 1929 scholastic reports, it seems probable that there is a greater trend toward speaking English than was found in the Spanish-speaking group. How extensive this trend is can not safely be inferred from our figures.

The Czechs are nationally a relatively new group, though the portions of Europe from which the Czechs came have long been represented in Texas. In 1870, for example, there were 780 foreign born from Bohemia, which number had grown to 9,204 in 1900. On the whole, however, the Czechs are a newer group than either Mexicans or Germans. In the U. S. census of 1930 the number of Czechs in the first and second generations was eight-tenths of 1 per cent of the total population. In the scholastic census of 1929 (part of the state only), however, the number said to speak Czech or Bohemian was 1.2 per cent of the total. There are many Czechs in the third generation and beyond—how many and in how many cases Czech is still the home language, it is impossible to say.

Little need be said about the minor groups other than that which the tables show. One of the oldest of these groups is the French, but in the aggregate it is still relatively small. Even the small groups, however, are frequently very serious educational problems, at least from the standpoint of language, when the population is concentrated in a given community.

*Supplementary Data on Illiteracy, Health, and
Assessed Valuation*

As indicated earlier, the population data will be supplemented by statistics on illiteracy, health, and assessed valuation. Illiteracy is that given by the U. S. census of 1930; health is measured by the number of deaths per 10,000 of the general population (in 1930); and assessed valuation is the total assessed valuation reported to the State Comptroller by the several counties as of January, 1931. It is recognized that these measures are more or less imperfect and inadequate, but it is believed that they are important as indices of conditions which need to be considered in relation to the education of national and racial groups.

DALLAM	SHERMAN	WATKINS	COLE FEE	WILSON
HARTLEY	MOORE	HUTCHINSON	ROBERTS	WHEELER
OLDHAM	POTTER	CARSON	GRAY	WHEELER
DEAF SMITH	RANDALL	ARMSTRONG	DONLEY	COLEMAN

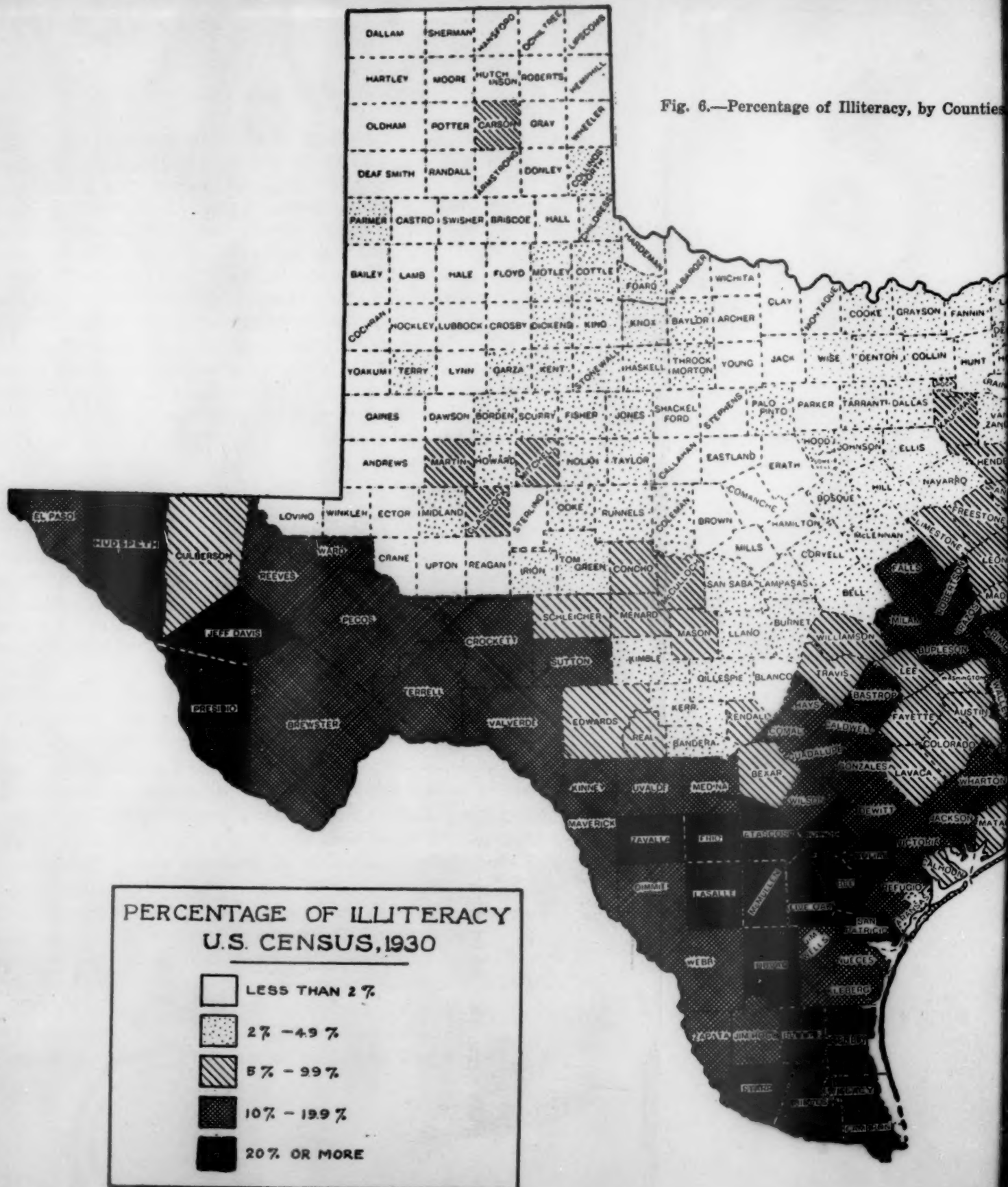


Fig. 6.—Percentage of Illiteracy, by Counties, 1930.



Illiteracy, as reported in the U. S. census, is based upon the census taker's record of whether a person 10 years of age or older "can read or write in any language." It is possible that through failure to understand, some persons of foreign birth or parentage were recorded as illiterate when they were actually able to read and write a little in their native language. The more serious error, however, is in the other direction. Persons, one may say on the basis of the army experience, are frequently called literate when they read and write only haltingly and poorly.

Again, it is clearly recognized that the death-rate does not adequately reflect health conditions; yet it is clearly one important index, since death is the end-result of poor health. It has the advantage of relative accuracy, but is subject to whatever failure there may be in rendering proper reports to the State Department.

The assessed valuation is readily available, but is subject to two errors. The first is that, while nominally assessments are based on full value, the actual basis of valuation is undoubtedly somewhat different from county to county. Probably, therefore, only large differences are significant. The second error is one of interpretation. Assessed wealth, it is well known, is not at all synonymous with actual wealth, and just now (1933) conditions are so abnormal that the interpreting of the figures is even less certain. However, it is instructive to compare communities on the basis of assessed valuation, even when it is known that the basis is an imperfect index of the ability of communities to pay for their schools.

The counties of the state were divided into five groups: (1) counties having a Mexican scholastic population (but not negro) equal to or exceeding 10 per cent of the total scholastic population; (2) counties having a negro (but not Mexican) scholastic population equal to or exceeding 10 per cent of the total scholastic population; (3) counties having both a Mexican and a negro scholastic population equal to or exceeding 10 per cent of the total scholastic population; (4) all other counties—that is, those having a small percentage of or no Mexicans or negroes; and (5) a selected list of 12 counties in which the proportion of Germans or Czechs is relatively large (exact figures are not available). All except one of the last named counties fall also in one or more of the first three groups above named. The median percentage of illiteracy, the median number of deaths per 10,000 and the median assessed valuation per scholastic are shown in Table 11. The median is the

median of the items for the several counties. Figures 6, 7, and 8 show the conditions graphically.

TABLE 11

Illiteracy, Death-rate, and Assessed Valuation
in Certain Groups of Counties

(In items 1-5, the table shows medians of the figures for the several counties; in item 6, the figures are means for the state.)

	Percent- age of Illiteracy	Deaths per 10,000	Assessed Valuation per Scholastic
1. Counties having large Mexican (but not negro) population	15.5	98	3,132
2. Counties having large negro (but not Mexican) population	6.7	86	1,688
3. Counties having large negro and Mexican population	11.5	99	2,625
4. Counties having a large percentage of neither Mexicans nor negroes	1.7	58.5	2,638
5. German and Czech counties ¹	6.7	89	2,429
6. The state average	6.8	96	2,687

¹Eleven of the twelve are also in one or more of the first three groups. See text also.

The percentage of illiteracy for the entire population of the state as a whole is 6.8, that of native whites (not including Mexicans so classified in the census) 1.4, that of foreign born whites (not including Mexicans) 7.3, and that of negroes 13.4. Figures are not available for the foreign groups separately. However, the illiteracy in counties having a large Mexican (but not negro) population averages 15.5. The inference is clear that the illiteracy among Mexicans is very high, higher than that of negroes, while the illiteracy among the other non-English-speaking stock taken as a whole is much less. In a few of the counties having a large Mexican population the tabulation shows that a fourth or more of the population can not read and write in any language.

The death rate for the state as a whole is 96 per 10,000. For negroes it is 127 per 10,000. Figures are not available for foreign groups. In the counties having the five largest cities of the state—Bexar (San Antonio), Dallas (Dallas), El Paso (El Paso), Harris (Houston), and Tarrant (Fort Worth)—the death rate is higher than the state average, being 146, 107, 171, 107, and 104, respectively. Whether this larger average is the result of better reporting or of other factors need not concern us here. It may be observed, however, that Dallas, Harris, and Tarrant have a large

Fig. 7.—Number of Deaths per 10,000

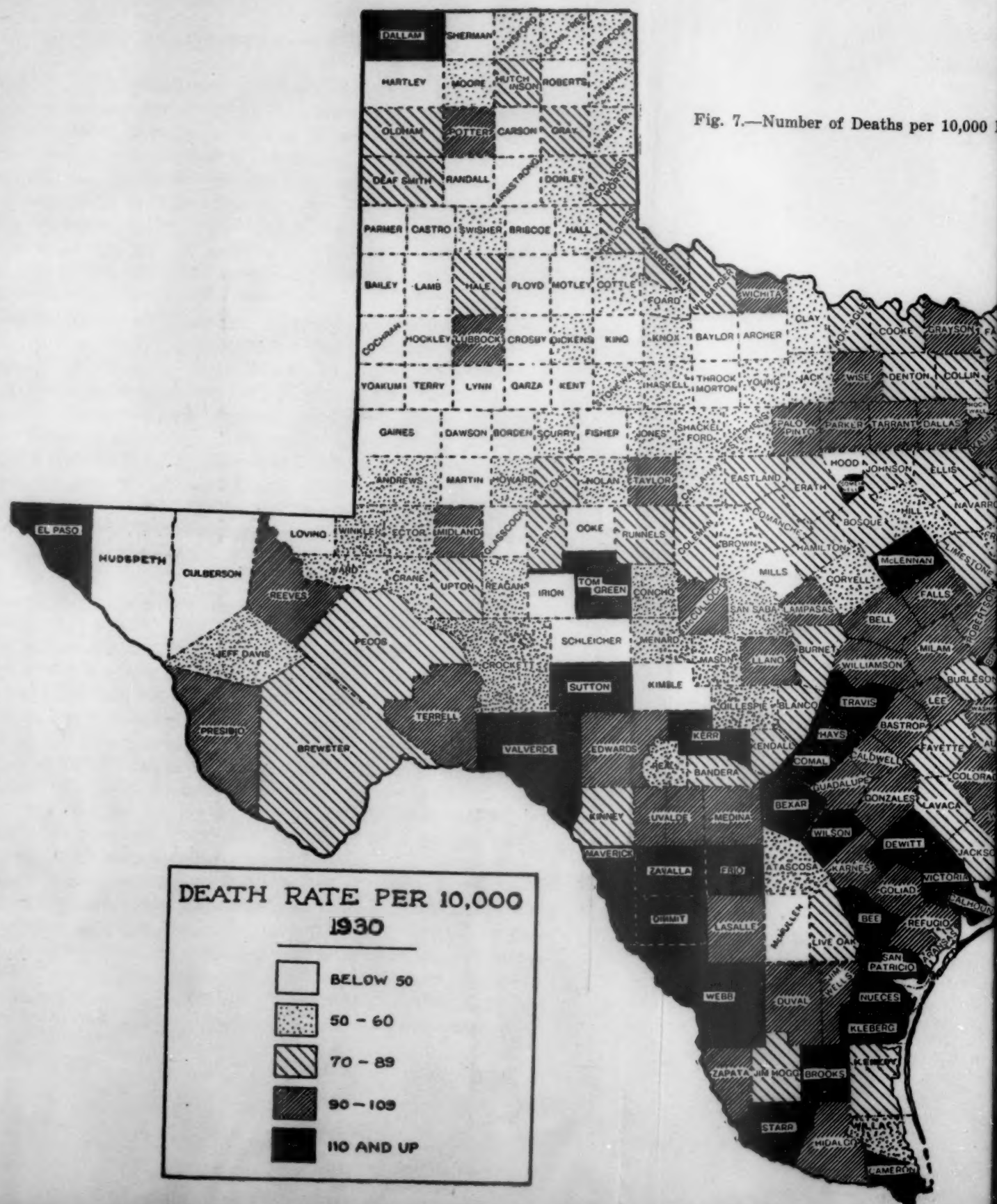


Fig. 7.—Number of Deaths per 10,000 Population, by Counties, 1930.



negro population (scholastics about 17, 20, and 12 per cent, respectively) and that Bexar and El Paso have a very large Mexican population (scholastics about 44 and 68 per cent, respectively). Furthermore, a consideration of counties by groups (as in Table 11) reveals that on the average, the death rate is high in counties with a large Mexican population, is a little lower in counties with a large negro population, and is much lower in counties with a large percentage of neither Mexicans nor negroes. It may be concluded that a high death rate, as well as illiteracy, is characteristic of the Mexican population of Texas.

It will readily be admitted that illiteracy and disease are undesirable. It is generally recognized, too, that education is a powerful weapon against both. But education requires money. In this state, moreover, a large share of the expense of the schools must be borne by local communities—if under present conditions provision is made for every scholastic. Even at the rate of \$17.50 per scholastic, the highest state apportionment yet made, a class of 40 pupils would draw from the state only \$700.00, an amount which in normal times is obviously too low to support a well-prepared teacher and conduct a modern school. Out of this situation arises the question as to the relative ability of local communities to pay for their schools.

It is a matter of common knowledge that local communities are of very unequal wealth. In fact, a plan for giving extra state assistance to the schools of the poorest communities has already been enacted into law. In this study, the assessed valuation per scholastic has been used as a rough index of the relative ability of counties to maintain schools. When compared on this basis counties are shown to vary over a wide range. Eleven have an assessed valuation of more than \$10,000 per scholastic, while seven have less than \$1,000 per scholastic. The state average is \$2,687. In general, the counties having a large negro (but not Mexican) population are the poorest (median \$1,688) of all groups studied. The group of counties having a large Mexican (but not negro) population has a median assessed valuation per scholastic of \$3,132, which is above the state average. It seems, therefore, that these counties as a group are amply able to educate their children. This average must not be applied to individual counties, however, for some are relatively poor—if assessed valuation per scholastic is a reliable index. The assessed valuation per scholastic in the counties having the five largest cities is as follows: Bexar, \$2,921;

Dallas, \$4,309; El Paso, \$2,772; Harris, \$3,967; Tarrant, \$3,824. It is evident that in this group the counties with large Mexican populations (Bexar and El Paso) have much lower assessed valuations per scholastic than the others.

Summary

This report has presented population data supplementing those contained in the writer's *The Education of Mexican and Spanish-Speaking Children in Texas* (1930). Statistics have been given on the Spanish-speaking population, other non-English-speaking or foreign groups, and the colored population. The distribution of these groups has been considered in connection with illiteracy, death rate, and assessed valuation.

Texas stands first among seven southwestern states in total population. It has a smaller percentage of foreign white stock of the first and second generations but a much larger negro population. Of a total of 19 per cent of foreign white stock in the first and second generations about 12 per cent is Mexican. It has more than one-half of the Mexicans of the southwestern group of states. Within the state Germans and Czechs are next in order among the non-English-speaking groups. Nearly 15 per cent of the total population is of negro stock.

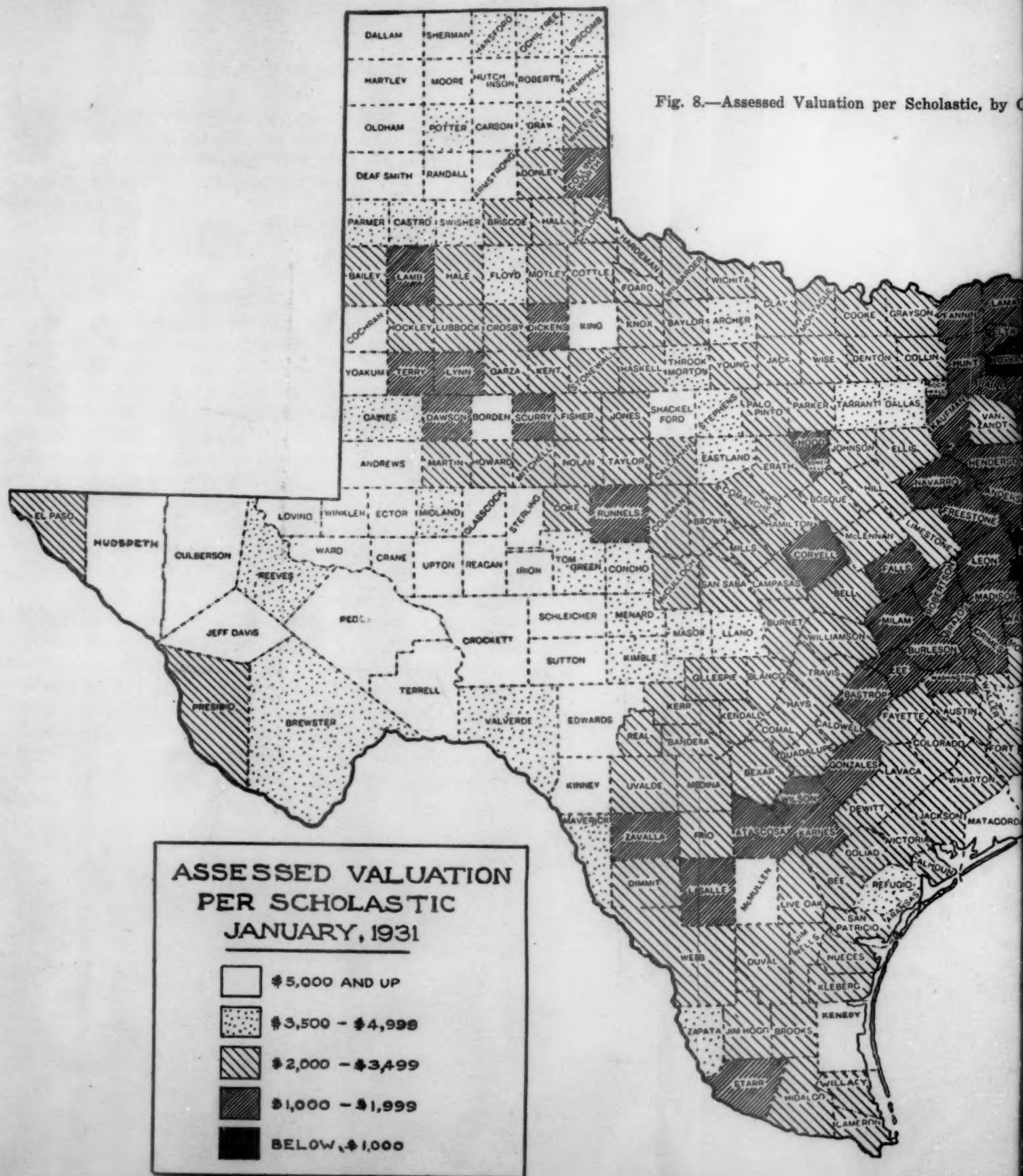
Since June, 1930, the number of Mexicans emigrated from this country has exceeded the number admitted.

The Mexican population is greatest along the Rio Grande and northward into Central Texas. Other non-English-speaking foreign groups are found in greatest numbers in the large cities, in Central Texas, and in a group of counties near Travis County.

The scholastic census (children 6 to 17, inclusive) reported to the State Superintendent of Public Instruction, exceeded the U. S. census of 1930 for the same ages by 4.5 per cent. The tendency for the scholastic census to exceed the estimated U. S. census is greatest in the counties having a relatively large negro population.

A study of home language (incomplete and probably somewhat inaccurate) with the scholastic census of 1929 showed 81.1 per cent of the total number English-speaking, 15.2 per cent Spanish-speaking, 1.5 per cent German-speaking, 1.2 per cent Czech-speaking, and smaller percentages of others.

In 1930 there were about 200,000 Mexican children and 250,000 colored children (13.3 and 16.5 per cent, respectively) of school age in Texas.



—Assessed Valuation per Scholastic, by Counties, January, 1931.



The total Mexican population (including a small number of other Spanish-speaking groups) was probably as high as 790,000 in 1930, of whom from 75,000 to 100,000 were native born of native parents. Probably, the home language of 97 per cent or more of them is still Spanish.

In 1930, there were about 150,000 Germans of the first and second generations in Texas and many more of the third generation and beyond. It seems likely that they adopt English somewhat more readily than the Mexicans.

A large but somewhat smaller group is of Czech origin. To what extent their home language has become English, it is impossible to say.

While other national groups are smaller in the aggregate, their concentration in a given community may constitute a serious educational problem.

Texas has an illiteracy of 6.8 per cent. This rises to 25 per cent or more in some of the counties and is practically non-existent in others. It is especially high in counties having a large Mexican population and is high among negroes.

The death rate similarly is high among negroes and apparently still higher among Mexicans.

The ability of the several counties to pay for education—so far as this is measured by assessed valuation per scholastic—varies from less than \$1,000 per scholastic to more than \$10,000 per scholastic (as of 1931). On the average, the counties having a large number of negroes are poorest. The average of the counties having a large percentage of Mexicans compares favorably with that of the state. However, Bexar and El Paso counties, centers of Mexican population, have lower assessed valuations per scholastic than the other counties in which the largest cities of Texas are located.

THE IMPEACHMENT OF COLONEL W. L. McGAUGHEY (1893)

BY CORTEZ A. M. EWING

University of Oklahoma

For nineteen years, following the abortive attempt to remove Judge Chambers in 1874, the Texas Legislature refused to invoke the impeachment remedy. In the late Eighties, the address procedure was brought into use against Judge Willis, but unsuccessfully. It was not until 1893 that the impeachment power was dragged forth from its temporary retirement for use against Colonel W. L. McGaughey, commissioner of the general land office. Elected to the land office in 1890, McGaughey was reelected in 1892 with thousands of votes to spare; and, at the time of his impeachment, he was being mentioned in some quarters as a candidate for the governorship in the impending election. A quiet, unpretentious farmer, conscious not of strength but rather of good intentions, the Colonel had built up a large political following from every section of the state. Known familiarly as "Uncle Jake," he was one of the veteran campaigners of Texas democracy. A political opponent described him as one "whose whiskers have been tossed in the winds upon the hustings from Red River to the Rio Grande."¹

Placing overpowering faith in the heart as a source of political and personal morality, the good Colonel brought to the land office a firm determination to do the right thing despite his meager knowledge of the land laws of the state. The good and trusting pre-Bryan Bryanites, who were captivated with his pleasing personality and his more remarkable personableness, were plainly not concerned about so unimportant an item as state land law administration. By January, 1893, the press persisted in dropping hints that all was not well at the land office. Sensing the threatened danger, Governor Hogg begged the Legislature to dispose of the unappropriated public lands before they were all frittered away to no good purpose.² From this statement it appeared that the official family was not definitely pledged to solidarity. Both Hogg and McGaughey had been elected as Silver Democrats in opposition

¹*The Dallas Morning News*, April 12, 1893.

²*The Dallas Morning News*, Feb. 22, 1893.

to the Grover Cleveland ticket, which was headed in Texas by Judge Clark.

The rumors persisted; and on March 7, J. I. Moody introduced a concurrent resolution in the House calling for an investigation of the land office.³ In pursuance of the resolution, three members were selected from each house, and this joint committee began immediately to take testimony. Only one of the six members was of the opposition party. The whole proceeding had every aspect of a whitewash party. Newspaper editors, hostile to the administration, belittled the investigation as an effort to quash further investigations of the Hogg government.

The joint committee reported on March 22 that, as a result of its investigations, it had discovered that McGaughey had, in regard to the sale of lands in Harris and Liberty counties, grossly violated the statutory provisions of the Act of 1887. This law had provided that agricultural lands, as distinguished from grazing lands, should not be sold to others than actual settlers and not for less than two dollars per acre. McGaughey, it was charged, had opened the lands for sale to any purchaser. Moreover, it was alleged that he had sold lands to residents of Austin prior to the time that the said lands were officially offered for sale. "We also find," the report ran, "that during the month of December, 1892, Davis Goaz, of Fort Worth, presented to John McGaughey, the head of the school land department, and to R. M. Phelps, the school land classifier, each 500 shares of mining stock of the par value of \$500, and to L. S. Ross, Jr., head of the sales department, one silk hat. We do not find that the said stock or hat was received with any wrongful purpose, but we severely deprecate the practice of heads of important departments and trusted clerks receiving gratuities from those with whom their offices bring them in contact. A favor bestowed usually expects a favor in return." The joint report ended by recommending that the attorney general be directed to institute suits for the recovery of the illegally purchased lands and that the land commissioner remove his son John McGaughey from his position as head of the school land department.⁴

Upon this rather innocuous report, the opposition press poured out its venom. As an example of this criticism, the *Cleburne Chronicle* remarked:

³*House Journal* 1893, 546, 547.

⁴*House Journal* 1893, 707-709.

Poor old Land Commissioner McGaughey has gone wrong, but a generous constituency will throw the mantle of charity over him. He just didn't know any better. The legislative committee appointed to investigate the affairs of the land office have unearthed mistakes to the extent of 139 sections of land sold in violation of the law . . . Mack can and no doubt will plead the "baby act," that he did not know . . . it was wrong, in other words that he was violating the law, and give the committee an opportunity of white-washing their report.⁵

The *Fort Worth Mail* was even more irascible:

The *Mail* does not believe that Land Commissioner McGaughey is guilty of any intentional wrong in selling the school lands of Harris and Liberty counties to speculators in violation of law; it was the man's gross ignorance that led him into committing the mistake. The people of Texas are to blame for placing him in the position.⁶

On March 24 a special investigating committee was appointed in the House to continue the work of the joint committee.⁷ The failure of the press to accept the judgment of the joint committee was, no doubt, responsible for this continuation of the investigation. The politicians bowed to the apparent wishes of their masters. On the next day the land commissioner submitted a general statement as to the policy that he and his predecessor had followed in disposing of the public lands. He pointed out that many sales of "detached" schools lands had resulted in forfeiture by their purchasers on failure to pay interest and principle of the sale cost. He further stated that he had construed the Acts of 1887 and 1889 to include those detached sections in Liberty and Harris counties, which construction permitted sale to anyone except a corporation. These specified lands had been on the market for a long time without being sold to settlers.⁸

The house committee continued its investigations until April 6, when it reported in favor of impeachment. Only one member of the committee refused to concur in the majority report, giving as his reason the insufficiency of evidence of wilful corruption on the part of McGaughey. On the following day, McGaughey advised the house that he had removed his son from the school land department. This attempt to satisfy the inquisitorial appetite was either tardy or insufficient, for the house, almost immediately thereafter,

⁵Quoted in *The Dallas Morning News*, March 23, 1893.

⁶*Ibid.*, March 29, 1893.

⁷*House Journal* 1893, 735.

⁸*House Journal* 1893, 765, 766.

adopted the majority report by a vote of 80 to 21, with twenty-six members absent or not voting.⁹ A committee of ten members was selected to prepare articles of impeachment and present the same to the senate.¹⁰ A communication announcing the action of the house was received in the senate on April 8, and six days later the house committee appeared before the bar of the senate and impeached McGaughey of high crimes and misdemeanors.¹¹ Suspension from office followed immediately. The senate resolved itself into a court of impeachment on April 17. The chief justice of the supreme court administered the oath to the president of the senate, and the latter, in turn, administered it to the individual members of the senate court. In earlier Texas impeachments the oath was administered to the president by the secretary of the senate, and thereafter by the former to the court members.

Twenty-five articles were exhibited against McGaughey. In brief, they charged:

1. That McGaughey, on October 14, 1892, offered for sale certain sections of school land in Harris County to persons other than settlers;
2. That on the same date he offered these sections for sale as "detached" lands, when such sections were not so classified;
3. That he, on the named dates, sold these specified sections to persons other than settlers;
4. That he sold these lands as "detached" lands, when such was not the case;
5. That he sold these lands for \$2 per acre, when they were worth \$5 per acre;
6. That he sold these lands without first giving official notice to the clerk of Harris County as to the valuation fixed upon each section, as he was required to do by law;
7. That he colluded with certain named persons in the illegal sale of these lands;
8. That he obstinately refused to call upon the attorney general for an interpretation of the law regulating the sale of these lands;
9. That he, between the 9th and 23rd days of January, 1893, offered for sale certain specified sections of public school land in Liberty County;
10. That on the above dates he offered these lands for sale as "detached" sections, which was not their true classification;
11. That he sold these lands to certain specified persons on the named days, contrary to the laws regulating such sales;
12. That he sold these lands as "detached" sections, contrary to law;

⁹*Ibid.*, 890.

¹⁰*McGaughey Impeachment Proceedings*, xii.

¹¹*Ibid.*, xiii.

13. That he offered these sections for sale at \$2 per acre, when they were worth \$5 per acre;
14. That he offered certain of these lands for sale to persons other than settlers, contrary to law;
15. That he corruptly colluded with certain persons in making these sales;
16. That he obstinately refused to call upon the attorney general for his legal opinion concerning the sale of these lands;
17. That he permitted persons not employed in the land office to inspect the records of that office;
18. That he permitted certain named persons not employed in the land office to inspect the records of that office;
19. That he illegally refused to renew the lease of one Joseph Funk on certain sections of land in Tom Green and Irion Counties;
20. That he illegally leased these lands to one Charles Schauer;
21. That he illegally changed and cancelled the evaluation placed upon certain timber lands of Newton County;
22. That he illegally cancelled the evaluation placed upon certain timber lands of Jasper County;
23. That he made false memorandum in records of the land office in regard to lease payment of B. H. & J. W. Snyder;
24. That he permitted the two Snyders to retain possession of those lands after their lease had expired;
25. That he, on March 24, 1893; attempted to persuade William Bramlette, chief clerk of the land office, to make a false certificate concerning a certain map of Liberty County.¹²

The respondent introduced a general demurrer in which he maintained that: (a), the impeachment court had no jurisdiction in this case because neither the constitution nor the laws defined the crimes that were of impeachable nature; and (b), no one of the actions alleged in the articles constituted treason, bribery, or an high crime or misdemeanor, within the meaning of the constitution. Moreover, he presented special demurrers to each and every article of impeachment. Most of these special demurrers offered that no impeachable matter was alleged, no wilful wrong-doing charged, and no corruption averred. The special demurrers to those articles charging impeachable offenses prior to November, 1892, denied that those acts were legal and valid grounds for impeachment, because his reelection at that time constituted popular and lawful condonation for any official mistake of his prior administration.

To the allegations of the articles, the respondent made formal answer, in which he emphasized that he had consciously followed

¹²*McGaughey Impeachment Proceedings*, xv-xxix. Another article was later added.

the precedents established by his predecessor, and that most of the charges were based upon questions on which the statutes permitted the commissioner to exercise his discretion. For the most part, the articles charged misconstruction of the land laws, and not corruption. He denied that the lands were sold at a price less than their real value. These lands had remained unsold for twenty years. They were not desirable for agricultural purposes, and the respondent could not interpret the statutes to mean that such lands should not be sold for other purposes.¹³

Arguments on the demurrers did not begin until April 24. Four days were required to complete this feature of the trial, which, in many respects, represents the finest legal presentation of the nature of impeachable offenses to be found in any of the Texas impeachment documents.¹⁴ As is consistently the case in such arguments, the decisive point at issue was as to the real nature of the impeachment remedy. Was it a criminal, or a civil, proceeding? Counsel for the respondent sought to prove that it was a criminal proceeding and that, therefore, only crimes were impeachable offenses. The demurrers, then, should be sustained on all of the articles which did not allege criminal action on the part of the officer. The managers countered by arguing that impeachment was not a criminal action. No formal punishment, such as imprisonment, could be assessed by an impeachment court. And, since it was not a criminal proceeding, the house of representatives was not restricted to acts defined as crimes in the Texas laws in preparing and exhibiting articles of impeachment against an officer of the state. Misconstruction of a statute would not constitute valid grounds for criminal prosecution, but, in order to protect the state, it offered a legitimate reason for removal from office by the impeachment process. According to this line of reasoning, there exist practically no limitations to the impeachment of civil officers, except politics and the consciences, if any, of politicians. Incidentally, American impeachment history offers sufficient precedents to support that contention.

Counsel for McGaughey stressed the fact that the impeachment remedy was not intended for use against trivial and inconsequential mistakes of administrative officers. H. W. Lightfoot quoted from Justice Miller on the famous observation by James Bryce

¹³*Proceedings McGaughey Impeachment*, xxxvii-xliv.

¹⁴*Ibid.*, xlvii-cxxxii.

that impeachment "is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun, which needs complex machinery to bring it into position, an enormous charge of powder to fire it and a large mark to aim at." In this case, chided Lightfoot, they are trying to train the impeachment howitzer on a snowbird.¹⁵ The articles charged such petty offenses: Why not seek a remedy by another means, a more reasonable one?

At the conclusion of the argument on the demurrers, the galleries were cleared preparatory to the court's consideration of the argument. Both parts of the general demurrer were overruled, but eleven votes were cast to sustain the second section. The trial might well have ended at this point, and, indeed, motions were introduced in the house and in the court seeking to quash the whole proceeding upon the ground that a sufficient number of the court's members had already gone on record against the articles to remove any possibility of a final sustainment of the impeachment.¹⁶ Incidentally, no one of these eleven members cast a single vote for conviction in the final balloting. There seems considerable reason for requiring a two-thirds vote for overruling demurrers.¹⁷ If that were the accepted practice, many vexatious but unsuccessful impeachment trials would be averted and considerable sums of money saved to the state.

The court proceeded to ballot upon the special demurrers. After six ballots, a motion was adopted opening the galleries to the public. Twenty-three divisions, in all, were taken on the special demurrers, which resulted in sustaining those for articles 5, 6, 8, 16, 17, 18, 19, 20, 23, 24, and a part of 4. Counting the twenty-sixth article, added later, sixteen articles remained for trial. Each of the eleven members who voted to sustain the second section of the general demurrer voted to sustain each and every special demurrer. Table I records the individual votes of the members on all the demurrers.

¹⁵*Proceedings McGaughey Impeachment*, li.

¹⁶*Ibid.*, 10; *House Journal 1893*, 1092.

¹⁷Motion was made in the senate on April 27 to change the rules of the impeachment court to include this innovation, but it was defeated 16 to 11. If the resolution had been successful, rule 12 would have read: "All demurrers, exceptions, etc., shall first be heard and disposed of, and it shall require a two-thirds vote of the members of the court present to overrule the same." *Senate Journal 1893*, 644.

Following the balloting on the demurrers, the court proceeded to hear the testimony of witnesses. In all, twenty-one witnesses, including the respondent, were put on the stand. For the most part, the testimony centered about the classification of the public school lands and the construction that the commissioner had placed upon the statutes. The additional article of impeachment, number 26, was added by action of the court on May 3.¹⁸ The motion of the managers to amend article 25 had been defeated by the court, after the respondent had made objection to such change on the ground that only the house of representatives could bring the charges, and that, for the court to permit such alteration, would in reality constitute an initiation of impeachment charges in the upper house.¹⁹ The new article embraced the effect sought by the motion to amend the twenty-fifth article.

McGaughey aided his cause materially by his own testimony. In a simple, unaffected, if fumbling, manner, he recited many of the details of his administration, offering reasons for the inauguration of this or that policy of land sales. In explaining the reason for selling the Harris County lands to non-settlers, he related experiences which settlers had had in trying to live on the low, swampy land of the Gulf section. If people could not live there, it was certainly not available for agricultural purposes. Pages of McGaughey's testimony before the house committee were presented as evidence, a practice not usually followed in impeachment trials.

The final arguments of counsel were brief, only two short speeches being given. The powerful pyrotechnical, legalistic bar-rages which featured the demurrer arguments were not resumed. By agreement, the facts of the case were not argued. Counsel for respondent commended the land commissioner for his far-sighted administration of the public domain; while Wynne, for the managers, pointed out the apparent deviations from the statutory provisions. Criminal malfeasance was not charged. The state's case lacked substance. It had shrivelled smaller even than snowbird dimensions. The chief gunner was at a loss to know even the direction taken by the quarry. The early promise of a fine exhibition of heavy ordnance marksmanship was reduced to the dullest of blackboard demonstration of the abstract principles of trajectory. The devastating effects of the anti-climax reduced the whole

¹⁸*McGaughey Impeachment Proceedings*, 75.

¹⁹*Ibid.*, 53-55.

TABLE I
VOTES ON DEMURRERS: MCGAUGHEY IMPEACHMENT*

Dem'ts	General 1												4				5-6		7	8	9-14	15	16	17-24	21-22	25	2	4	Total	
	1	2	1	2	1	2	1	2	3	ii		1	2		1	2-3		1	2-3	spec.	i	Aye	Nay							
Agnew	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Atlee	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	24							
Baldwin	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Boren	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		25							
Bowser	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		26							
Browning	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E									
Cranford	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		25							
Crowley																						18								
Dean	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	7	19							
Dickson	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		26							
Douglass	N	N	N		A	N	A	N	A	N	A	N	A	N	A	N	A	N	A	N	A	10	14							
Goss	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Greer	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		24							
Hutchison	N	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	25	1							
Imboden	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		26							
Jester	N	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	22									
Kearby	N	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	25	1								
Lawhon	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	24								
Lewis	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		26							
McComb																														
McKinney	N	N	A	A	N	N	N	N	P	N	N	N	N	N	N	N	N	A	N	N	N	5	19							
Prester	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	1	25							
Shelbourne	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Simpson	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Smith	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Steele	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	24							
Swayne	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Tips	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2	24							
Whitaker	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E									
Woods	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	26								
Yoakum	N	N	N	A	N	A															A	4	4							
Sustained									S	S					S	S	S													

*Data compiled from *Proceedings McGaughey Impeachment*.

Legend: "A" means to sustain the demurrer and "N" means to overrule it; "p" means present but not voting; "E" means excused from voting; a blank space signifies unexcused absence; and "S" means that that article was sustained by a majority of the votes cast on it.

TABLE II
FINAL VOTES MCGAUGHEY IMPEACHMENT*

	1	2	3	4	7	9	10	11	12	13	14	15	21	22	25	26	A	N	E	X
Agnew	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Ailee	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Baldwin	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Boren	N	N	A	A	A	A	A	A	A	A	A	A	N	N	N	N	10	6		
Bowser	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Browning	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E			16	
Cranford	N	N	A	A	A	A	A	A	A	A	N	N	A	A	N	N	10	6		
Crowley	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Dean	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Dickson	A	A	A	A	A	A	A	A	A	N	A	A	A	A	N	N	13	3		
Douglass	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Goss	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E			16	
Greer	N	A	A	A	A	A	A	A	A	N	A	A	N	N	N	N	10	6		
Hutchison	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Imboden	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Jester	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Kearby	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Lawhon	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Lewis	N	A	A	A	A	A	A	A	A	N	A	A	A	A	N	N	12	4		
McComb	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
McKinney	N	N	A	A	A	A	A	A	A	A	A	N	A	A	N	N	11	5		
Presler	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			16	
Shelburne	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Simpson	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Smith	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Steele	N	A	A	A	A	A	A	A	A	A	A	A	A	A	N	N	13	3		
Swayne	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Tips	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Whitaker	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E			16	
Woods	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N		16		
Yoakum	A	A	A	A	A	A	A	A	A	A	A	A	A	A	N	N	14	2		
Total Ayes	2	5	8	8	8	8	8	8	8	5	7	6	6	6	0	0	93			
Total Nays	25	22	19	19	19	19	19	19	19	22	20	21	21	21	27	27		339		

*Data compiled from *Proceedings McGaughey Impeachment*.

Legend: "A" means to sustain the article, and "N" to overrule the same; "E" means excused from both attendance and voting; and "X" signifies absence without excuse from the court.

proceeding to such abjection as to resemble, in an incredible degree, the dramatic effect precipitated by the reading of an epilogue off-stage.

Immediately after the completion of the closing arguments, the court proceeded to vote upon each of the sixteen articles. The final outcome was a foregone conclusion. For sentimental reasons, "Uncle Jake" was not to be found guilty for his indiscretions

which were, as he explained, mistakes of the head and not of the heart. Of the twenty-seven members who voted, no more than eight of them voted to sustain any one article. In fact, nineteen of the twenty-seven members voted for acquittal on each charge. This number included the eleven members who had voted to sustain the second section of the general demurrer. Table II gives the individual record of the balloting.

The recurring question as to whether partisan politics influenced the results of the proceeding is a difficult one to answer. At least, there are certain conclusions that may be drawn. The senate was composed of thirty Democrats and one lone Populist.²⁰ Not a single Republican sat in this august body. So, the usual Republican-Democratic rivalry was certainly non-existent. Yet the bitterest of all political controversies are those of internecine character, and the Texas Democrats of this period were split into the Hogg and Baker factions. The former were Silver Democrats and at the outset support McGaughey, who was elected on that platform. Soon it became apparent to observers that the Hogg administration would not support the land commissioner if the irregularities of that officer threatened to prove embarrassing. There were open charges that the administration was prepared to make the kind, old Colonel the scapegoat of the whole affair; and this fact, presumably, mustered considerable support in his favor. Moreover, while the records of the land office revealed considerable irregularity, the investigation discovered a diversity of opinion, even among the leading lawyers, as to the interpretation placed upon the ambiguous land laws. This resulted in the building up of considerable sentiment against the impeachment and, in fact, it came to be viewed as political persecution.

In my opinion, internecine politics played a prominent part in the initial investigation. Once started, like a ball rolling downhill, there appeared no convenient place to halt the action. And, being largely an attempt to castigate the rebellious Silver Democrats for their apostasy, and especially Governor Hogg, the proceeding became obnoxious and even futile once it became apparent that the governor was going to wash his hands of the whole matter. Also, as the case was resolved into one of individual incompetency, little was to be gained, from a partisan viewpoint, in flagellating the

²⁰Hutchison was the Populist senator. The house of representatives consisted of six Populists, one Republican, and one hundred twenty Democrats.

trusting McGaughey. Indeed, such action might have been regarded by Texas *Demos* in quite another light. Persecution, incidentally, has a tremendous appeal to the Texas electorate. Moreover, McGaughey, who seems to have had a ready facility in diagnosing the mental reservations of the grass-roots, took steps to protect himself and had recommended the appointment of a Gold Democrat to an existing vacancy. He had also refused, when he took office, to oust certain politicians of that persuasion from their positions in the land office. With all these conflicting factors, there was little practical chance of sustaining the articles of impeachment.

RECENT INCREASES OF FARM TENANCY IN ARKANSAS

BY THOMAS C. McCORMICK

University of Arkansas

The federal census shows a heavy increase in percentage of farm tenancy in Arkansas during the present century, percentages being 45.4 in 1900, 50.0 in 1910, 51.3 in 1920, 56.7 in 1925, and 63.0 in 1930. Over the same period the number of tenants rose from 81,140 to 152,691, and the acreage they operated expanded from 25 to 42 per cent of all farm land. Since tenancy in Arkansas is known, as far as the subject has been investigated, to be related to low standards of living and weak support of social institutions, these figures are disturbing.¹

I. The Major Changes

Between 1920 and 1930, the number of farm tenants in Arkansas increased by 33,470, while the number of owners declined by 23,638. At the same time, the number of farm laborers diminished by 1,396. The land in farms was 8 per cent less in 1930 than in 1920, but there were 9,730 more farms, with a decrease in average size of farm from 75.0 to 66.2 acres.

II. Geography of Farm Tenancy, 1930

High rates of farm tenancy follow the river valleys in Arkansas. Tenancy is especially concentrated in the valley of the Mississippi along the eastern margin of the state, but it is also marked in the Arkansas River valley in the central portion, and along the Red and Ouachita rivers in the south. The highest percentages of increase in the last decade occurred in thirteen counties in the south, in four counties in the northeast, and in two counties in the northwest. Five counties in northwest Arkansas registered percentage decreases; but otherwise tenancy showed a general if uneven rise over the entire state.

III. Factors Associated with High Tenancy, 1930

In 1930, the three factors, value of farm land per acre (X_3), percentage of population negro (X_4), and cotton acreage per farm (X_2), taken together, were associated with 85.7 per cent of

¹T. C. McCormick, "Farm Standards of Living in Faulkner County, Arkansas," University of Arkansas Agricultural Experiment Station Bulletin, 1932.

the variations in percentage of farm tenancy between the counties of the state ($R^2 1.234 = .857$). According to the method of partial determination, holding constant the remaining two factors in each case, tenancy was most closely related to value of farm land per acre ($r^2 13.24 = .423$), second to percentage of population negro ($r^2 14.23 = .363$), and third to cotton acreage per farm ($r^2 12.34 = .338$).

IV. Changing Factors Tested for Association, 1920-1930

Changes in percentage of farm tenancy between 1920 and 1930 were correlated with the following factors, by counties:

(1) Changes in cotton acreage per farm, 1920-1930, $r = .414 \neq .02$

(2) Changes in value of farm land and buildings per acre, 1920-1930, $r = .391 \neq .02$

(3) Changes in per cent population negro, 1920-1930, $r = .355 \neq .01$

(4) Tax per acre divided by rent per acre, 1930, $r = -.275 \neq .11$

(5) Percentage of farm tenancy, 1920, $r = -.273 \neq .11$

Also,

(6) Changes in number of farm tenants were associated with changes in number of farm owners, 1920-1930, $r = .357 \neq .10^2$

The low but significant positive correlation found between changes in number of farm owners and changes in number of farm tenants by counties, 1920-1930, (6) above, shows that tenancy tended to increase most where ownership decreased least.

²Various factors which proved to have little or no relation to changes in percentage of farm tenancy were:

(a) Net movement to farms as percentage of all farmers in county, 1930, $r = -.200 \neq .11$

(b) Changes in percentage of farm tenants negroes, 1920-1930, $r = .108 \neq .12$

(c) Changes in number of farmers, 1920-1930, $r = .058 \neq .12$

(d) Changes in mortgage debt interest, 1920-1930, $r = .019 \neq .12$

(e) Changes in ratio of mortgage debt to value of farm, 1920-1930, $r = -.017 \neq .12$

(f) Rent per acre divided by value of farm land per acre, 1930, $r = -.013 \neq .12$

Further, no association appeared between:

(g) Percentage change in number of farm tenants and percentage change in number of farm owners, 1920-1930, $r = .124 \neq .12$

(h) Number of farms reporting persons moved from towns and change in number of owners, 1920-1930, $r = .139 \neq .12$

There were further inclinations for tenancy to increase most in counties (1) where cotton acreage per farm increased most; (2) where land values declined least; (3) where percentage of population negro increased most; (4) where taxes were lowest relative to farm rents; and (5) where the percentage of tenancy was lowest in 1920.

V. Summary and Conclusions

An increase of 28 per cent in the number of farm tenants in Arkansas between 1920 and 1930 was accompanied by a decline of 21 per cent in the number of farm owners, by an increase of

	Per cent change in tenancy	Change in value farm land and bldgs. per acre	Change in cotton acreage per farm
Five counties with greatest tenancy in- crease (averaged)	+ 105	— \$7.90	+ 6.7 acres
Five counties with tenancy decrease (averaged)	— 8	— \$13.14	— 11.8 acres

4 per cent in the number of farms, and by a decrease of about 12 per cent in the average size of farms. The highest rates of tenancy were in the fertile river valleys; but increases occurred in 70 of the 75 counties of the state.

Three factors, (1) cotton acreage per farm, 1930, (2) value of farm land per acre, 1930, and (3) percentage of population negro, 1930, can explain all but 14 per cent of the differences in percentage of farm tenancy between the counties in 1930. On the other hand, not much more than one-third of the variations over the last census decade can be mathematically accounted for in terms of changes in these three factors ($R^2 1.234 = .387$); and adding various other factors to the equation contributed little more to the total correlation.

**FIFTEENTH ANNUAL MEETING OF THE SOUTHWESTERN
SOCIAL SCIENCE ASSOCIATION**

The fifteenth annual meeting of the Southwestern Social Science Association was held in the Adolphus Hotel, Dallas, Texas, March 30 and 31, 1934. The program, corrected as far as possible, was as follows:

FRIDAY, MARCH 30, 9:00 A.M.

Agricultural Economics Section

Chairman: B. M. GILE, University of Arkansas.

Agricultural Readjustments for the Gulf Southwest:

The A. A. A. and a Constructive, Long-Time Program for the Wheat Industry, J. O. ELLSWORTH, Texas Technological College, Lubbock, Texas.

The A. A. A. and a Constructive, Long-Time Program for the Cotton Industry, J. T. SANDERS, Oklahoma A. & M.

The A. A. A. and a Constructive, Long-Time Program for the Livestock Industry, C. A. WILEY, The University of Texas.

The A. A. A. and a Constructive, Long-Time Program for Land Utilization, C. O. BRANNEN, University of Arkansas.

Discussion: A. B. COX, The University of Texas. FRANK BRIGGS, Editor, *Farm and Ranch*. J. D. TINSLEY, Atchison, Topeka, and Santa Fe Railroad.

FRIDAY, MARCH 30, 9:00 A.M.

Business Administration and Economics Sections (Joint Session)

Chairman: W. F. HAUHART, Southern Methodist University.

Public Control of Business, ARTHUR B. ADAMS, University of Oklahoma.

Discussion: R. H. MONTGOMERY, The University of Texas.

Labor Under the N. R. A., KARL E. ASHBURN, Southern Methodist University.

Discussion: E. A. ELLIOTT, Texas Christian University and the N.R.A.

Influence of Codes on Cost Accounting, G. H. NEWLOVE, The University of Texas.

Discussion: W. B. COLE, University of Arkansas.

FRIDAY, MARCH 30, 9:00 A.M.

Government Section

Chairman: S. B. MCALISTER, North Texas State Teachers College.

The Significance of Recent Tendencies Toward Nationalism, S. D. MYRES, JR., Southern Methodist University.

Discussion: L. G. HALDEN, Sam Houston State Teachers College.

The Manufacture and Sale of Armaments, C. D. JUDD, The Texas State College for Women.

Discussion: A. P. CAGLE, Baylor University.

FRIDAY, MARCH 30, 9:00 A.M.

History Section

Chairman: C. T. NEU, Northeast Texas Teachers College.

Reunion: A French Colony in Texas, W. J. HAMMOND, Texas Christian University.

Round Table.

Theory and Practice in the American Historical Novel, E. E. LEISY, Southern Methodist University.

Discussion: WILLIAM B. RUGGLES, *The Dallas News*.

Legislative Impeachments in Tennessee, W. T. FOSTER, Centenary College.

Discussion: C. S. POTTS, Southern Methodist University.

FRIDAY, MARCH 30, 9:00 A.M.

Human Geography Section

Chairman: FRANK CARNEY, Baylor University.

Some Contributions of Dr. R. T. Hill to the Geology and Geography of Texas and the Southwest, ELMER H. JOHNSON, The University of Texas.

Relationship of the Gulf Coastal Plain Fault Systems to the Physiography and Human Geography, ED W. OWEN, Wentz Oil Corporation, San Antonio, Texas.

Youth, Maturity, and Old Age of Urban Communities, LEWIS F. THOMAS, Washington University.

The Distribution of Population in Oklahoma, C. J. BOLLINGER, University of Oklahoma.

Huepec: An Agricultural Village of Sonora, Mexico, LESLIE HEWES, University of Oklahoma.

Influences of Natural Conditions in the Development of Prince Edward Island, ADELPHIA MITCHELL, Sam Houston State Teachers College.

Some Phases of Geography in the Science Courses in the Austin Schools, W. W. McSPADDEN, Director of Sciences, Austin Public Schools.

The Relation of Coal and Iron to World Problems, MARY J. COWLING, North Texas State Teachers College.

Physiography of the Coast Prairies of Texas in Relation to Climatic Zones, W. ARMSTRONG PRICE, Corpus Christi, Texas.

The Peopling of Oklahoma, C. W. THORNTHWAITTE, University of Oklahoma.

The Rôle of Geology in Oil Finding in the Gulf Coast Salt Dome Area, W. B. McCARTER, Humble Oil and Refining Co., Houston.

FRIDAY, MARCH 30, 9:30 A.M.

Sociology Section

Chairman: W. P. MERONEY, Baylor University.

Sociological Research in the Southwest:

Sociology in Southwestern Colleges and Universities, T. C. McCORMICK, University of Arkansas.

Some Aspects of Negro Migration in Louisiana, FRED C. FREY, Louisiana State University.

Discussion: RANDALL C. HILL, Kansas State College.

Factors Relating to the Age of Oklahoma Farm Population at Marriage, O. D. DUNCAN, Oklahoma Agricultural and Mechanical College.

Discussion: DANIEL RUSSELL, Texas A. & M. College.

Crime in the Southwest, KARL E. ASHBURN, Southern Methodist University.

Discussion: HARLAN W. GILMORE, Tulane University.

FRIDAY, MARCH 30, 12:30 P.M.**Business Administration, Economics, Agricultural Economics, and
Government Joint Luncheon Conference**

Presiding Officer: S. H. MOORE, Southern Methodist University.

The Marketing of Professional Services, P. C. KELLY, University of Arkansas.

FRIDAY, MARCH 30, 12:30 P.M.**History Luncheon Conference**

Presiding Officer: J. L. GLANVILLE, Southern Methodist University.

Historical Research in the Southwest, R. N. RICHARDSON, Simmons University.

Round Table.

FRIDAY, MARCH 30, 12:30 P.M.**Human Geography Luncheon Conference**

Presiding Officer: FRANK CARNEY, Baylor University.

FRIDAY, MARCH 30, 2:00 P.M.**Agricultural Economics Section**

Chairman: T. W. LELAND, Texas A. & M. College.

Problems of Livestock Producers and Meat Packers of the Gulf Southwest:

Future of the Livestock Industry as the Livestock Producer Sees It,
W. B. MITCHELL, Marfa, Texas.

*Objectives of Organized Livestock Producers in the Development of the
Livestock Industry of the Southwest*, E. B. SPILLER, Secretary, Texas
and Southwestern Cattle Raisers Association, Fort Worth.

Functions of the American Institute of Meat Packers, G. L. CHILDRESS,
Director of the Institute and General Manager of Houston Packing
Company, Houston.

Financing of the Livestock Industry in Texas and the Gulf Southwest,
W. L. PIER, Stockyards National Bank, Fort Worth, Texas.

Why Meat Has Slipped in the American Diet, ERLE RACEY, Advertising,
Dallas, Texas.

Some Fundamentals to Be Considered in a Sound Livestock Program,
F. A. BUECHEL, The University of Texas.

Discussion: FRANK HOLLAND, *Farm and Ranch*. J. M. JONES, College
Station, Texas.

FRIDAY, MARCH 30, 2:00 P.M.**Business Administration Section**

Chairman: JOHN T. OWENS, Vice-President, Republic National Bank of
Dallas.

Commercial and Investment Banking:

The Present Situation in Commercial Banking, DEAN JAMES B. TRANT,
Louisiana State University.

Discussion: J. A. FITZGERALD, The University of Texas, and EUGENE
MCELVANEY, Vice-President, First National Bank of Dallas.

The Present Situation in Investment Banking, FREDERICK L. RYAN, Oklahoma University.

Discussion: J. C. DOLLEY, The University of Texas.

FRIDAY, MARCH 30, 2:00 P.M.

Economics Section

Chairman: VERNON G. SORRELL, University of New Mexico.

Monetary Policy:

The President's Gold Policy and Regulated Currencies, JACK JOHNSON, North Texas State Teachers College.

Discussion: M. K. GRAHAM, Graham, Texas.

Nationalism and Price Stabilization, PETER MOLYNEAUX, Editor, *The Texas Weekly*.

Discussion: F. B. CLARK, Texas A. & M. College.

The Silver Situation, FLOYD L. VAUGHAN, University of Oklahoma.

Discussion: JOSEPH E. SHAFER, College of Mines, El Paso.

FRIDAY, MARCH 30, 2:00 P.M.

Government Section

Chairman: C. V. HALL, East Texas State Teachers College.

Regional Government in the Southwest, R. W. COOPER, Research Assistant, Bureau of Research in the Social Sciences, The University of Texas.

Discussion: ROBERT L. OGDEN, County Judge, Dallas County.

Governmental Control of Industry through Industrial Codes, E. S. REDFORD, The University of Texas.

Discussion: J. W. PENDER, North Texas State Teachers College.

FRIDAY, MARCH 30, 2:00 P.M.

History Section

Chairman: S. W. NEWTON, North Texas State Teachers College.

An Old Mississippi Plantation, W. H. STEPHENSON, Louisiana State University.

Discussion: RAYMOND WELTY, Texas Christian University.

Some Observations on the Southern Overseer System, A. C. BRYANT, Dallas Technical High School.

Discussion: ANTHONY HUNT, Odessa High School.

A New View of the Social Sciences, J. B. PRESTON, North Texas Agricultural College.

Discussion: J. A. CREIGHTON, West Columbia High School.

FRIDAY, MARCH 30, 2:00 P.M.

Human Geography Section

Symposium: *Some Features of Climatology in the Southwest:*

Chairman: E. W. SHULER, Southern Methodist University.

Weather Bureau Work, Including Some Features of Aerological Work of the Bureau, JOSEPH L. CLINE, Dallas.

Meteorological Extremes in the Southwest, C. E. KOEPPE, Southwest Missouri State Teachers College.

Monthly Rainfall Maps of Texas, EDWIN J. FOSCUE, Southern Methodist University.

Texas Northers, IVAN R. TANNEHILL, Weather Bureau, Washington. Summarized by WILLARD GILL, Baylor University.

Climate and World Natural Regions, ELMER H. JOHNSON, The University of Texas.

FRIDAY, MARCH 30, 2:00 P.M.

Sociology Section

Chairman: MAPHEUS SMITH, University of Kansas.

Sociological Aspects of Leadership:

The Significance of the Leader for Society, JEROME DOWD, University of Oklahoma.

The Nature and Function of Prestige, A. O. BOWDEN, New Mexico State Teachers College.

Problems and Methods of Research in Leadership, E. L. MORGAN, University of Missouri.

Leadership, Planning, and the Professional Sociologist, WALTER C. RECKLESS, Vanderbilt University.

Discussion.

FRIDAY, MARCH 30, 4:00 P.M.

Special Session

Presiding Officer: C. PERRY PATTERSON, The University of Texas.

A meeting of the Executive Committee, Advisory Committee, and Project Committee of the Regional Economic and Social Research Program. Report of progress of the regional research program will be made and future plans will be discussed. General membership invited to attend.

FRIDAY, MARCH 30, 6:30 P.M.

General Conference Dinner

Presiding Officer: C. PERRY PATTERSON, President of the Association.

Preceding the address by Dean Loeb, DR. BENJAMIN B. KENDRICK, Chairman of the Southern Regional Committee of the Social Science Research Council, will speak briefly on southern scholarship.

Address: *Political and Constitutional Aspects of the New Deal*, ISIDOR LOEB, Dean of the School of Business and Public Administration, Washington University, St. Louis, and ex-president of the American Political Science Association. Dean Loeb attends the convention as National Representative of the American Political Science Association.

SATURDAY, MARCH 31, 9:00 A.M.

Agricultural Economics Section

Chairman: A. B. COX, The University of Texas.

Problems in Processing and Marketing Agricultural Products Other Than Livestock:

Milling and Marketing of Grain in the Gulf Southwest, GAYLORD J. STONE, Universal Mills, Fort Worth.

Canning Industry in the Gulf Southwest, Its Prospective Advantages and Possibilities, E. B. NEISWANGER, Vice-President, Central Power and Light Company, Corpus Christi.

Cotton Oil Industry in Texas and the Gulf Southwest, A. L. WARD, Executive Vice-President, Texas Cottonseed Crushers Association, Dallas.

Textile Industry in the Gulf Southwest, JAMES H. McDOWELL, New Braunfels Cotton Mills, New Braunfels.

Dairy Industry in the Gulf Southwest, R. L. POU, Southwest Dairy Products Company, Dallas.

Discussion: FRANK RADER, Southern Methodist University. STUART MCGREGOR, *Dallas News*, Dallas. J. H. HECKMAN, University of Arkansas. WALTER G. BLAIR, Texas Power and Light Company, Dallas. C. N. SHEPARDSON, Texas A. & M. College.

SATURDAY, MARCH 31, 9:00 A.M.

Business Administration Section

Chairman: J. A. FITZGERALD, The University of Texas.

An Analysis of the Arguments in Favor of Nationalism, C. C. FICHTNER, University of Arkansas.

The Arguments against Nationalism, A. P. WINSTON, The University of Texas.

Regionalism: A Factor in Nationalist Policies and International Relations, ELMER H. JOHNSON, The University of Texas.

SATURDAY, MARCH 31, 9:00 A.M.

Economics Section

Chairman: A. S. LANG, *Baylor University*.

Problems of Taxation and Production:

The Relationship between State and Federal Taxation, LEONARD LOGAN, University of Oklahoma.

Discussion: H. W. BLALOCK, University of Arkansas.

State and Local Taxation in a Period of Recovery, JAMES W. MARTIN, University of Kentucky.

Discussion: L. P. GABBARD, Texas A. & M. College. ELBERT M. BARRON, Sherman, Texas.

Taxation and Prices in Decreasing Cost Industries, C. A. DUVAL, The University of Texas.

SATURDAY, MARCH 31, 9:00 A.M.

Government Section

Chairman: R. E. JACKSON, Texas State College for Women.

Recent Trends in Our Shifting American Federalism, J. A. BURDINE, The University of Texas.

Discussion: HUGO WALL, The University of Wichita.

Remodeling Our State Taxation System, G. C. HESTER, Southwestern University.

Discussion: ELBERT M. BARRON, Member Texas Legislature.

SATURDAY, MARCH 31, 9:00 A.M.**History Section**

Chairman: E. N. BEHRINGER, North Texas Agricultural College.

Napoleon's Scheme to Revolutionize the Spanish Dominion of Texas, MATTIE

A. HATCHER, Library Archivist, The University of Texas.

Discussion: ANNA POWELL, North Texas State Teachers College.

Some International Aspects of the Macedonian Question, V. K. SUGAREFF, Texas A. & M. College.

Discussion: J. D. P. FULLER, Texas A. & M. College.

John Lathrop Motley as a Diplomat, LEON F. SENSEBAUGH, JR., Oklahoma City University.

Round Table.

SATURDAY, MARCH 31, 9:00 A.M.**Human Geography Section**

Chairman: FRANK CARNEY, Baylor University.

DR. E. W. SHULER, Southern Methodist University, has consented to conduct a field trip covering the chief physiographic features around Dallas; this will be given if desired Saturday morning, leaving headquarters at 8:45. The following route will be covered: Orange Street Terrace; Travis School Terrace; North Dallas High Terrace; S. M. U. Campus; Lovers Lane and distant view of White Rock cuesta; Love Field Terrace and Flying Field; Trinity bottoms and Levee district to the top of White Rock cuesta and return to Dallas about noon.

All who plan to take the trip should leave their names with Mr. Carney, Section Chairman, some time Friday. It is hoped that cars may be available among people who participate in the Human Geography Section.

SATURDAY, MARCH 31, 9:00 A.M.**Sociology Section**

Chairman: W. E. GETTYS, The University of Texas.

Democracy in Primitive Society, BREWTON BERRY, University of Missouri.

Discussion: ALVIN GOOD, Louisiana State Normal School.

Rural Youth Returns Home, GLENN A. BAKKUM, University of Wichita.

Discussion: J. J. RHYNE, University of Oklahoma.

The Function of the Imagination in Social Research, A. L. PORTERFIELD, Southeastern State Teachers College, Durant, Oklahoma.

Discussion: T. LYNN SMITH, Louisiana State University.

The Genesis of Race Attitudes, CARROLL D. CLARK, University of Kansas.

Discussion: W. C. SMITH, William Jewell College, Liberty Missouri.

SATURDAY, MARCH 31, 12:15 P.M.**Business Luncheon**

The fifteenth annual business luncheon and meeting was attended by sixty members. President Patterson presided at the business session. The usual order of business was followed, to-wit: Minutes of the Fourteenth Annual Business Meeting were read and were approved as read; the Secretary-Treasurer reported on membership and finances as follows:

Report on Membership, April 1, 1933, to March 15, 1934

Classes of Membership	No. April 1, 1933	Cancelled	Added	Net Gain	No. March 15, 1934
Life (M. K. Graham).....	1	---	---	---	1
Contributing	3	---	---	---	3
Sustaining	2	---	---	---	2
Active	323	17	28	11	334
	329	17	28	11	340

Financial Statement, April 1, 1933, to March 15, 1934**RECEIPTS****Membership:**

Contributing	\$ 20.00
Sustaining	10.00
Active	697.80
Total	\$ 727.80
Sale of Publications	4.25
Refund on Reprints	61.40
Total	65.65
Social Science Research Fund	497.10
Add (full page)	15.00
Refund from Secy. for Convention Expense	7.01
Total Receipts	\$1,312.56

EXPENSES**Printing:**

June (1933) Quarterly	\$ 240.00
September Quarterly	232.80
December Quarterly	242.40
Total	715.20
Bill Forms	2.85
Reprints	78.55
Engraving, June	8.00
Subscription cards	2.70
Total Printing	\$ 807.30
P. O. Deposits	20.04
Stamps and Office Supplies	99.82
Convention Expense (last year's)	50.02
Clerical Help	36.80
Interest on Warrants	3.16
Miscellaneous (Proof-reading, mailing <i>Quarterly</i> , etc.)	29.38
Total Expense	\$1,045.80

Deficit for 1932-1933	123.93
Total	1,169.73
PROFIT FOR CURRENT YEAR	142.83
Cash on Hand, March 15, 1934	\$ 267.06
Press, Amount Unpaid	124.23
Profit	\$ 142.83

The Secretary-Treasurer emphasized the need of financial aid and of an increase in membership. He reported that, in all probability grants from the Committee on Research in the Social Sciences at The University of Texas will end after 1935.

Professor E. G. Smith made the report of the auditing committee. He expressed the committee's approval of the financial statement for the year 1933-1934 as rendered by the Secretary-Treasurer. The committee recommended that in the future the Secretary-Treasurer's books be closed on February 1, and that his reports show accounts due to exhibit a better financial picture.

Professor R. H. Montgomery reported for the Board of Editors of the Quarterly:

AVERAGE COST PER ISSUE

1931-32	1932-33	1933-34
\$300.08	\$255.32	\$256.80

SIZE IN PAGES

	1931-32	1932-33	1933-34
June	102	94	98
September	94	116	93
December	83	98	97
March	80	96	130
	359	404	428
Average pages per issue	89.9	101	107

DISTRIBUTION OF ARTICLES BY SUBJECT MATTER AND BY AUTHORSHIP—SOUTHWESTERN v. ALL OTHERS

Vol. XIV.	No.	Subject Matter		Authorship	
		South- western	All Others	South- western	All Others
	1	4	1	5	---
	2	3	3	4	2
	3	2	2	4	---
	4	5	2	5	2

DISTRIBUTION OF ARTICLES BY FIELDS

	1931-32	1932-33	1933-34
Agricultural Economics	2	3	2
Business Administration	1	0	0
Economics	3	2	5
Government	9	10	6
History	4	2	1
Sociology	3	3	6
Miscellaneous	0	2	2

The committee on nominations composed of Professor Rupert Richardson, Chairman, Professor R. D. Thomas, and Professor S. H. Moore proposed the following officers for the Association for the coming year, Professor Richardson making the report:

President: Dean Charles Potts, Southern Methodist University, Dallas, Texas.

First Vice-President: F. L. Vaughan, University of Oklahoma, Norman, Oklahoma.

Second Vice-President: W. H. Stephenson, Louisiana State University, Baton Rouge, Louisiana.

Third Vice-President: C. O. Brannen, University of Arkansas, Fayetteville, Arkansas.

Elected members of the Executive Council, O. D. Duncan, Oklahoma A. & M., Stillwater, Oklahoma; E. H. Johnson, The University of Texas, Austin, Texas.

The report was accepted intact by those present and President Patterson declared the foregoing nominees duly elected.

Under miscellaneous business Professor S. D. Myres, Jr., introduced the following resolution:

Resolved, that the president of the Association be empowered to appoint five representative members of the Association equitably distributed among the several states and the several Social Science disciplines to cooperate with a similar group from the Southeast in carrying out the plan outlined by Professor Kendrick. This group of five or seven members shall serve for two years and shall report every year to the Association as to its activities.

[After the general conference banquet on Friday evening, March 30, Professor Benjamin Kendrick, Chairman of the Southern Regional Committee of the Social Science Research Council, proposed that the Social Science organizations of the Southeast and the Southwest combine for their common benefit. He suggested that representatives of the various disciplines in the two sections should be appointed to constitute a bi-regional conference. The prime object of this confederation would be to solicit funds from foundations and individuals for the support of purely southern Social Science projects. He also suggested the merging of the *Southwestern Social Science Quarterly* with like periodicals of the Southeast.] Professor Myres' resolution was discussed by Professors Meroney, Bernard, A. B. Cox, Kendrick, Brannen, C. P. Patterson, and Sanders. Professor Lay offered as an amendment that the president have discretion to appoint either five or seven to the committee so that it should be of the same size as the committee from the Southeast. The motion as amended carried.

Professor Patterson then declared the Fifteenth Business Meeting of the Southwestern Association adjourned. After the business meeting the Executive Council elected the following officers:

Board of Editors: C. P. Patterson, R. H. Montgomery, E. G. Smith.

J. Lloyd Meham was chosen Secretary-Treasurer for the coming year.

The program committee for the sixteenth annual meeting is the following: Government, J. A. Burdine, Chairman, The University of Texas; History, W. H. Stephenson, Louisiana State University; Economics, Jack Johnson, North Texas State Teachers College, Denton; Agricultural Economics, T. C. Richardson, Dallas, Texas, "Farm and Ranch"; Human Geography, E. J. Foscue, Southern Methodist University; Business Administration, C. C. Fichtner, University of Arkansas; Sociology, W. C. Smith, William Jewel College, Liberty, Missouri.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

J. Lloyd Mecham, *Church and State in Latin America, A History of Politico-Ecclesiastical Relations*. (Chapel Hill: The University of North Carolina Press, 1934, pp. x, 550.)

A general authoritative survey of the religious or Church-state problem in Latin America has been needed for a number of years. Studies of the question in a few countries where the difficulties have been most pronounced have appeared, and the more remote and relatively uncontroversial history of *patronato real* in the colonial period has received attention. The larger subject has frightened scholars away. Its very size in time and area, its vast and scattered documentation, and, above all, its highly controversial character have warned off all save the partizan and the incompetent. At last the subject has been treated by a scholar, admirably trained in the field, with sound critical judgment, and able to preserve an unbiased attitude amid the claims and counter-claims of the warring groups. Professor Mecham has accomplished a difficult feat in a fashion worthy of the highest praise and his book should have a wide audience consisting not only of students, but also of thoughtful members of the general reading public.

In the first three chapters of this work the history of the relations of Church and state are traced from the original papal bulls, which bestowed the right of *patronato real* on the Catholic monarchs, through the difficult period of the wars of independence to the recognition of the New World republics, beginning in 1836 with the recognition of New Granada by the papacy. Against this solid background the succeeding chapters recount the vicissitudes of the Roman Catholic hierarchy in Venezuela, Colombia, Ecuador, Peru, Bolivia, Paraguay, Chile, Brazil, Uruguay, the republics of the Caribbean and Central America. The special problems of our neighbor Mexico are reserved for separate treatment in three concluding chapters.

In his survey Professor Mecham reveals anti-clericalism, as a general factor in Hispanic America, gathering strength after the mid-nineteenth century. The course it took has varied from country to country. "In some countries, like Argentina, Colombia, and Peru, the old Church-State relationship that existed in the colonial period has been perpetuated, but with certain modifications. In other nations such as Brazil, Chile, Cuba, Panama, and Uruguay, the connection between Church and State has been dissolved, and a situation rather similar to that which exists in the United States obtains. In still other countries, of which Mexico is the best example, the Church has not only been disestablished but has been put under strict State surveillance. That a predominantly Roman Catholic populace, which lived for centuries under a common politico-religious régime, should, after independent governments had been organized, apply such diverse remedies for the solution of the religious problem, is both interesting and perplexing." Professor Mecham stresses the political character of the opposition to the Church. The clergy had participated in government in the colonial period and naturally continued this practice into the national period. Inheriting

a conservative tradition, they were often on the losing side and were punished along with the other political "outs." The anti-clericals were not at odds with the Church on the score of beliefs, but rather in the political and economic spheres, where they felt that the Church blocked the progress of liberalism.

The situation of the Church in Mexico, it is made clear, has not been as different from the situation elsewhere in Hispanic America as popular opinion has held. It has certainly been more spectacular and due to its proximity to the United States it has been better known. Professor Meham brings much that is new to light in his discussion of problems in Mexico. In particular, a judicious use of manuscript materials from the Bazaine, Gómez Farías, and Riva Palacio papers of the Genaro García Library enriches these pages. His even-handed assessment of blame and his condemnation of intolerance on both sides is especially commendable. While admitting that "The religious question in Mexico is still, most emphatically, an open question," he ventures to hope that "If it is demonstrated after a few years that the State, and particularly 'The Revolution,' have nothing to fear from a free Church, it can be confidently expected that the present drastic and illiberal laws will be revoked. On that date it will be safe to say that the religious question in Mexico has been settled."

The book is well-written and can be recommended to the general reader as well as the specialist. It is thoroughly documented, has no preconceived thesis which it is trying to establish, and has an excellent bibliography which neglects no area of Hispanic America. In short, the reviewer feels that Professor Meham has fulfilled his task so well that in the future no general work on Hispanic America will fail to cite it and all who wish insight into the vexatious problem of human relations which it discusses, will be obliged to consult its pages.

ARTHUR S. AITON.

The University of Michigan.

Liefman, Robert, *Cartels, Concerns, and Trusts*. (New York: E. P. Dutton and Company, 1933, pp. xxix, 379.)

Von Beckerath, Herbert, *Modern Industrial Organization: An Economic Interpretation*. (New York: McGraw-Hill Book Company, 1933, pp. xiii, 385.)

These two books by German authors devoted, the one entirely, the other in large part, to cartels and monopolistic combinations in German industry, are of particular interest at the present juncture of American affairs.

Dr. Liefman has achieved wide renown as a student of cartels. This is the seventh revised edition of a book whose past successes attest to its worth. Dr. Liefman defines a cartel as an association of independent enterprises of similar type to obtain a monopoly of the market. The monopolistic aim provides the test; and he is interested only in the monopolistic activities of cartel associations, and not in the sideline activities of research, standardization, trade statistics, etc.

The book discusses the nature and origin of cartels and the forms of cartel organization; the effect of cartels and cartellization upon the participating firms, outside producers, the workers, technical progress; upon immediate, intermediate, and ultimate consumers; and upon trade fluctuations and technical progress. Several chapters are devoted to public regulation of

cartels both in Germany and other countries. Other chapters deal with the closer forms of monopoly organization,—the interest groups and trusts—toward which cartels tend. The book closes with a general discussion of the problem of monopoly, which in turn leads to the social control of business and the big question, capitalism or socialism.

In general, Dr. Liefman believes that concerns form cartels to stifle competition so as to reduce the risk of loss of capital, rather than to obtain monopoly profits. He thinks that the cartels are generally able to maintain prices little, if any, above the competition level. The reason for this is fundamental to the entire discussion, namely that monopoly is never absolute; there is always competition lurking in the background. On this account, he considers that the harm done consumers by cartels has been exaggerated. There is pointed out how organization in one stage of production begets organization elsewhere, so that gradually the character of economic struggle is changing; the struggle of each against all becomes a struggle of organized groups. This is true even for consumers. The significance of consumers' coöperatives, according to Liefman, lies in the fact that they are monopoly associations of consumers, organizations whereby consumers place themselves on a more equal bargaining plane with monopolies on the other side of the counter; not in any new principle of organization (socialism) that these groups introduce into the economic system. To the reviewer, it seems that Dr. Liefman is inclined to give the cartels a little the best of it in his discussion. His pages do not reflect the severe criticism levelled against cartels in the German rationalization literature. Perhaps the fact, as many ear-marks indicate, that the greater part of the book was composed before the current depression has something to do with this. Liefman believes that cartels level out price fluctuations; from this he tends toward the position that they likewise steady production. Experience during the depression indicates that there is much to be said for the opposite view, namely that stability of prices is attained at the cost of increased fluctuation in production. He believes that cartels have not slowed down technical progress or encouraged inefficiency, the reason being that the cartels are so loose and impermanent that the participating concerns do not relax their technological vigilance. Also cartels have favored technical progress by encouraging vertical integration, both by member firms and customers. Thus monopoly bears within itself the seed of fresh competition. The whole comes perilously close to saying that monopolistic associations have no disadvantages because they are not monopolistic.

The problem of monopoly inevitably involves one's attitude towards the economic system as a whole. Thus Liefman, in his last chapter, makes a plea for a reformed capitalism: through correction of the abuse of monopoly, through greater public control of corporations, through their wider ownership and wider distribution of their income, through curtailment of excessive differences in income through taxation, especially inheritance taxes, and through the taxing out of existence of all big profits from speculation and gambling—through these means we may retain "the principle of private gain-seeking and yet do a great deal more to secure satisfactory economic and social conditions than would be possible through general socialization."

Professor Von Beckerath's book covers more ground but less intensively. The general problem to which he addresses himself may be put thus: given

private enterprise, the desire for profits, and modern technology, why is modern industry organized as it is? To answer this, he undertakes a careful, detailed analysis of the effect upon the organization and structure of industry of the raw material markets, the labor market, the market for industrial equipment, the long and short term capital markets, and of sales markets. This has been done piecemeal by various writers. So far as the writer is aware, it has not been done as completely as Von Beckerath does it. Of especial interest is the discussion of the effect of the peculiar conditions in the capital market during the inflation period in Germany upon the structure of industry. The latter half of his book is given over to a discussion of cartels and their effects and of social policy towards them. Finally he, like Liefman, concludes with a discussion of the larger question of control, and socialism versus capitalism.

Most of Von Beckerath's book also was apparently written before the depression. That enables one, at any rate, to realize how greatly ideas have changed in these four years. Thus in discussing the relations between managers and shareholders within the corporation, Von Beckerath stresses how buying into concerns has become a piece of competitive tactics, a fact which leads him to dwell upon the necessity of protecting the management of concerns from chance majorities of stockholders—to be achieved, one would judge, by methods so popular before the depression, i.e., non-voting stock, pyramided holding companies, etc. There is nary a word about the necessity of protecting shareholders against the piracy of insiders—against "Insullism."

Professor Von Beckerath dwells at considerable length upon the effect of unions and social insurance upon profits, and concludes that both have damaged the German economy by cutting down capital accumulation. He sees a conflict between the necessary prerequisites for industrialism and democratic sentiments among the masses, especially when these masses have been led by radical leaders to believe in a conflict of class interests. He believes that "public enterprise diminishes the productivity of the national economy," and that "private capitalistic industry is the only economic organization able to retain the present civilized standards of closely populated industrial countries." That sounded better three or four years ago than it does today.

To this reviewer, a fault of the book lies in the looseness (and frequency) with which certain leading phrases or stereotypes of vague undefined meaning are used: thus, he concludes the book by saying that it is improbable that the gradual evolution of private industrialism should lead to socialism, since "socialism presupposes a collectivist mentality which differs fundamentally from that possessed by industrial workers, for even those who belong to socialist parties are molded by the influence of an individualistic and materialistic century." Is a Ford worker afflicted with a collectivistic, individualistic, materialistic, and/or socialistic mentality, and if so, is the disease permanent?

We have heard much in this country from business spokesmen of repeal of the anti-trust laws so that business may plan. These two books give little backing to that plea. Mere association of business concerns for the purpose of fixing prices is not planning, and there is no evidence that it has any formidable effect upon the national economy other than that of perhaps

increasing the portion of the national income going to the owners of industry. Planning requires that entire control of the industry be concentrated under one hand, in short, that the monopoly be absolute. Cartellization appears to be a sort of half-way house, which has neither the virtues of competition nor of that degree of control over an industry which permits planning.

LOUIS S. REED.

The University of Texas.

Gillin, John Lewis, *Social Pathology*. (New York: The Century Company, 1933, pp. viii, 612.)

In the words of the author "This work is an attempt to treat social maladjustments in a framework of sociological theory. Sociological theory and social pathology have been too long separated. As long as sociology was conceived of as a philosophy of history, or as an interpretation of the evolution of society from a primitive to a civilized condition, social pathology remained in sociological outer darkness. Only a few of the leading sociologists have conceived that the maladjustments to be seen in any society were to be interpreted in terms of sociological theory." Out of dissatisfaction with this state of affairs this book was written as "an attempt to unite in theory what are actually joined in life."

Though bearing the unmistakable stamp of the classroom the organization of the book is good. In an introductory discussion social pathology is defined as "the study of man's failure to adjust himself and his institutions to the necessities of existence to the end that he may survive and meet fairly well the felt needs of his nature." The source of pathological conditions is found in maladjustment between the individual and the social structure. The influences making for maladjustments are traced to the individual, through modifications of his hereditary qualities, and to changes in the social structure wrought by new inventions, discovery of new natural resources, and by the organization of new methods of social living.

Part One is given over to a discussion of "The Pathology of the Individual" under such headings as Sickness, Blindness and Deafness, Disablement, Drug Addiction, Alcoholism, Mental Deficiency, Mental Disease, Suicide, and Personal Disorganization. From a sociological point of view the individual is held to be pathological when he is unable to adjust his life-reactions to the conditions which exist in the society in which he happens to live. Part Two deals with "The Pathology of Domestic Relationships." The usual topics are treated. The pathology of domestic relations is defined in terms of "the lack of those arrangements and relationships, of those emotional tones and intellectual understandings on which depends the development of a personality adjusted to the requirements of social life." Part Three is a consideration of "The Pathology of Social Organization" through a discussion of "Urban Disorganization," "Rural Disorganization," "Class and Group Disorganization," and "International Disorganization." Part Four continues with a treatment of pathological conditions arising from the malfunctioning of the economic system. Under the general heading of "The Breakdown of Economic Relationships" such matters as "Poverty and Dependence," "Women and Children in Modern Industry" and "Unemployment" are considered. Part Five concludes the book. Herein is considered "The Pathology of Cultural

Relations," under such headings as "The Pathology of Religion," "The Break-down of Moral Standards," "Delinquency and Crime," and "Personal and Social Reconstruction."

Such a book is hard to evaluate. One's estimate of it will depend largely upon what one expects to find. To the reviewer the chief value of the work, especially for use in the classroom, is to be found in what might be called the "earnestness" of the writer. To a generation that has been quite aptly characterized as being in a position similar to that of a man trying to maintain his equilibrium with one foot on an escalator and the other on solid ground, the reminder that cynicism is as inadequate as the dogmatism from which we are fleeing comes as a timely warning. And after all, the book is no less scientific because the author warms to his subject on occasion. It may well be that on certain issues, at least, enough data have been collected to justify the use of such ringing terms as the author employs, for example, in his denunciation of war.

The same quality characterizes the discussion of alcoholism. Great care seems to have been taken to assure an adequate presentation of both sides of the question. A careful distinction is made between the general problem of the use of alcoholic beverages and prohibition as a particular method of control. The author holds no brief for prohibition as such. And yet, he is betrayed into no "unscientific liberalism" as regards the procedure by which prohibition became law. He disposes of the myth that "it was the result of war hysteria" and against a background of factual material declares that "No amendment to the Federal Constitution ever passed by such a decided majority." Regardless of one's personal opinion in the matter, in the face of the need to make satisfactory disposition of the problem, all possible data should be made available. The discussion in this book will help.

The same sort of balance is to be noted in the chapter dealing with "Immorality and Vice." Certainly the author could not be accused of being "old-fashioned." The facts are presented but his evident concern in the matter frees him from being "namby-pamby."

Other examples might be given but enough has been said to indicate that what might have been just another book on social pathology is really an addition to the literature in the field that will be welcomed by the discriminating reader. He will be likely to challenge, however, the use of the status quo as the standard by which conditions, both individual and social, are to be rated as "normal" or "pathological." But in light of the general disagreement as to the meaning of the term "pathological" even his assumption is pardonable.

The book is marred by more errors in composition than one expects to find in a work of this nature. In Chapter Fifteen poor outlining gives a wrong impression as to the divisions employed in treating the topics. In Part II, Chapter Twenty-one on "The Unmarried" might well have followed Chapter Sixteen which deals with "Illegitimate Parenthood." Part IV, for no apparent reason, is marked by a deviation from the terminology used in the other parts. Careless proof-reading is also evidenced by a few typographical errors scattered through the work. While these imperfections detract from the "finish" of the book they in no way affect its value.

The argument of the text is reinforced by numerous charts and graphs as well as by excellent reading lists appearing at the close of each chapter.

In this connection it is regrettable that publication was not delayed until statistical data of the 1930 census were available. More attention might also have been given to the intensification of pathological conditions as the result of the depression. But brief mention is made of the fact.

REX D. HOPPER.

The University of Texas.

Nussbaum, Frederick L., *A History of the Economic Institutions of Modern Europe*. (New York: F. S. Crofts and Company, 1933, pp. xvi, 448.)

This book is an attempt to present the main outlines of Sombart's *Der Moderne Kapitalismus* to the elementary student in textbook form. As everyone knows who is familiar even with the outsides of Sombart's hefty tomes, this is a considerable task. Limitations of space alone, not to mention the limitations of expected readers, would make it impossible to do justice to the prodigious erudition of the original. In the nature of the case all that was possible was to sketch Sombart's theory of capitalism, its origins, growth, and consummation. Professor Nussbaum has done this very competently. He has been faithful without being slavish, and has followed his original unwaveringly but not without plucking occasional flowers from other fields along the way. His book has been well received, and deservedly.

Nevertheless I believe that it should be used with extreme caution. Perhaps because he is an historian, Professor Nussbaum seems to be unaware that the historical interpretation he is presenting rests not so much upon historic fact as upon certain highly controversial assumptions of economic theory. Indeed, as Professor Frank Knight has pointed out, Sombart himself is far from being an impeccable economic theorist; and this judgment is the more significant coming as it does from one who is in the main sympathetic. My own tolerance of Sombartism is so much less than Professor Knight's that I can scarcely indicate the difficulty better than by reference to his opinion. Obviously it makes a great deal of difference to the historian of capitalism—to Sombart and therefore to Nussbaum—just what capitalism is conceived to be. Is it a material or a spiritual phenomenon? Sombart (and therefore Nussbaum) conceives it to be largely spiritual, and Professor Knight emphatically agrees. ("Historical and Theoretical Issues in the Problem of Modern Capitalism," *Journal of Economic and Business History*, I (1928), p. 130.) "Leaving entirely aside for the moment the question of historical causality," he says, "there is no doubt that the modern capitalistic spirit is the most important fact of modern economic history, or even of modern history at large"; and it is on the basis of this extraordinary assertion that Professor Knight is moved to regard Sombart, whose major pre-occupation is this "capitalistic spirit," as having been a major contributor to "one of the great intellectual achievements of the age."

Students of logic will recognize Professor Knight's "no doubt" dictum as an "E proposition," and will recall that the fatal defect of this logical form (to which nevertheless most of us are addicted) is that one case to the contrary disposes of it. In spite of this logical advantage I should hesitate to advance the claim that my own expression not merely of doubt but of strong belief to the contrary disposes of Professor Knight's case. Rather I should be inclined to urge him not to leave the question of historical causality entirely aside. It seems to me that in comparison with the solid material reality of

machinery, for example, the existence of a "capitalistic spirit" is not only inferential: the inference is one of historical causality. The fact is, we live by machinery now-a-days; and the question is, what produced the machinery? Proceeding on the basis of his spiritistic theory of historical causality, Sombart regards machinery as something quite incidental to the capitalistic spirit: neither cause nor effect, but a sort of epiphenomenon. Neither the capitalism which he seeks to explain nor the institutional dynamics by which he seeks to explain it seems to me to have any substantial reality, like that of machinery, or any relevance to the problems of the origin and development of such realities.

In questioning these assumptions I do not mean to suggest that my opinions have greater validity than Professor Knight's, let alone Sombart's. The point is that Sombart's economic history is permeated with opinion. In *Der Moderne Kapitalismus* this is not merely avowed: it is boasted. Sombart is nothing if not original. But in Professor Nussbaum's sketch all this sense of originality of intellectual genius proudly announcing a new synthesis is lost in the shuffle; in the elementary sketch the Sombartian theory, stripped of all but the thinnest covering of historical fact, stands forth alone as truth about which there can be "no doubt." This is dangerous—not because the issues are controversial, but because they are not advertised as such. I believe in the presentation of controversial issues even to elementary students, but *as controversial issues*. I should like very much to see Professor Knight's brightly illuminating and avowedly partisan analysis expanded into a book. A manual of the capitalist controversy would be uniquely valuable. But in spite of its excellent qualities—or perhaps because of them—Professor Nussbaum's transparent exposition strikes me as dangerous, and quite without animus I should like to warn all undergraduates to read it with their fingers crossed.

C. E. AYRES.

The University of Texas.

Sydnor, Charles Sackett, *Slavery in Mississippi*. (New York: D. Appleton-Century Company, 1933, pp. X, 270.)

This composite study of the institution as it existed in Mississippi, a state of the new South, is a scientifically reconstructed picture of the variety and amount of work, housing, clothing, punishment, and rewards of the slave in this region. Other angles, which include buying, selling, hiring, fugitives, the profitableness of this labor system, and the colonization movement, are ably developed.

On the whole slaves were well fed, adequately clothed, and housed as comfortably as pioneer conditions permitted. Theoretically they were subjected to rigorous control both by the owner and the State, but in reality many of them had an amazing freedom, and citizens frequently complained of their noisy rowdyism in towns and villages on Sunday. The most unattractive features of the system are revealed in the discussion of fugitives. The probability that the greater number ran away in an effort to rejoin family or friends is one of the unhappy disclosures. Causes for buying and selling, the slave coffle, grooming the negro for the market, the prices paid for the different classes, and the names of traders operating in the State are illuminative of the local and interstate trade. Hiring slaves, especially

skilled workmen, was not uncommon. With money earned above the wages due the master many were able to purchase their freedom.

The analysis of the profits derived from slave labor in a state where land was rich and cheap, and where cotton was especially adaptable, is a distinct contribution to economic history. When the map showing the distribution of slaves over the various soil areas is taken in connection with the fact that the conservative cotton planter under the most favorable circumstances rarely realized more than six or eight per cent on his investment, one has good evidence that slavery had about reached its limits of expansion by 1860.

The Mississippi Colonization Society was promoted by large slaveholders of the Southwestern counties. The primary purpose was to remove free negroes but "its actual work soon veered" toward the repatriation of unmitted slaves. The Mississippi emigrants, well equipped with money and tools, were settled in a separate colony at Greenville, Liberia. This colony is still in existence, and the report of the League Commission of 1931 seems to show that the descendants have in turn enslaved their less fortunate brothers of color.

There is not a chapter of this carefully written book that does not add immeasurably to both the specific and general knowledge of the institution. An immense amount of new information has been introduced. Much manuscript material was available in public libraries, and access to a dozen extremely valuable sources still in the possession of descendants of Mississippi slaveholders greatly increased this field. The files of the *Woodville Republican*, second oldest newspaper of the state and intact over a period of twenty-five years, yielded a wealth of detail. Executive documents have been exhaustively examined. Last but not least, the comprehensive bibliography and copious footnotes will be a delight to the scholar.

WILLIAM MARY BRYANT.

The University of New Mexico.

Frankfurter, Felix (ed.), *Mr. Justice Brandeis*. (New Haven: Yale University Press, 1932, pp. vi, 232.)

This is a group of essays in tribute to Justice Brandeis on his seventy-fifth birthday. Each essay is an interpretative and appreciative analysis of an aspect of interest in the great jurist's work. Each is the scholarly treatment which the statesmanlike qualities of the jurist merit. They have been published elsewhere, but the student of judicial history will be gratified by their assembly in convenient form. The current recognition of the invaluable contributions of Justice Brandeis to the method and spirit of the court are eliciting many analyses of his past and present position, but this little volume will demand the attention of every student of the relation of the court to social movements.

The essays are preceded by an intimate personal statement by Justice Holmes and a tribute to the mental qualities of Justice Brandeis by Chief Justice Hughes. The longest essay is by Felix Frankfurter on "Mr. Justice Brandeis and the Constitution." The others are: Max Lerner, "The Social Thought of Mr. Justice Brandeis"; Donald R. Richberg, "The Industrial Liberalism of Mr. Justice Brandeis"; Henry Wolf Biklé, "Mr. Justice Brandeis and the Regulation of the Railroads"; Walton H. Hamilton, "The Jurist's Art."

Taken together, the essays reveal first and foremost the "intellectual procedures" of justice Brandeis and his conception of the task of the Court. It is not from philosophical premises nor from "sterile clichés," but on the ancient rule "*Ex facto jus oritur*" that Brandeis relies for a "system of living law." The painstaking summation and analysis of social facts and their placement in their context forms the basis upon which Brandeis determines the law that is to govern. Though, as Hamilton reveals, he is a master of the techniques of the law, he "regards them as instruments to be employed, rather than compulsions to be obeyed." Moreover, he offers deference to a non-juristic consensus as to the significance of social facts and the legislative and administrative measures demanded by them, and demands proof, witness the O'Gorman Case, that the expedients adopted are not appropriate for the correction of an existing evil. He thus takes a more limited view of the function of the court in prescribing the limits of legislative and administrative action than some of his colleagues.

The essays, particularly those by Hamilton, Lerner, and Richberg, show also the "liberal" predispositions of the Justice. "At the heart" of his thinking lies the conception of the worth of the individual, and he protests against giving fuller protection to "property" than to "liberty." He believes in democracy, political and industrial, as means of expressing liberty. And he fears the oppressions, as well as the inefficiencies, of big business. His sympathies have been with the common man, with competition with its pathological manifestations corrected, and with coöperative endeavor.

These essays were written after the changes in the personnel of the court; and Hamilton shows the tendency of the present court, though by a slight majority, to shift to the ways of thought of Brandeis. The essays were written, however, before the decision in the Oklahoma Ice Case. Justice Brandeis was again dissenting. And that case gives further significance to the question raised by Richberg, quoting Charles A. Beard, as to whether "the new freedom" of Wilson and his appointee can survive. It will be interesting to note the extent to which the "intellectual procedures" of Justice Brandeis will be accepted by the court of the future and it is to be hoped that the eminent justice himself can aid in the application of those procedures to the facts which he so pungently emphasised in his dissent in the Oklahoma Ice Case.

EMMETTE S. REDFORD.

The University of Texas.

Wittke, Carl, *A History of Canada*. (New York: F. S. Crofts and Company, 1933, Revised Edition, pp. 443.)

The appearance of a new edition of Professor Wittke's *History of Canada*, published originally in 1928 as one of the Borzoi Series, will be welcomed by students of Canadian History for the light it throws on recent developments in Canada. It would be ungenerous to offer any carping criticism of this admirable work but a survey of its general plan discloses what at first sight appears to be a serious disproportion between the relative emphasis given to the French and British periods. The distribution of span (40 pages to the former as compared to 300 to the latter) is liable to leave a wrong impression on readers who are not aware of the importance of the French regime in the history of Canada.

For the British period, the treatment, within the limits allowed by a text-book, is for the most part, adequate. There are, however, some exceptions. A fuller discussion of geographical factors would have gone far to elucidate the role of sectionalism in the past and present development of Canada. It might be pointed out that it is a mistake to speak of the great plains of Canada, as "extending from the Appalachians to the Rockies" as Professor Wittke does on p. 3. Some estimate also of the role played by immigration would also have helped to clarify the picture. The Loyalists receive adequate attention but the immigration from the Scottish Highlands that followed it, the influx of the post-Napoleonic period and the activities of the colonizing companies in the 30's and 40's receive scant notice.

The problem of Canadian nationality and of Canada's relation to the mother country is viewed from the angle of the present generation of nationalist writers in Canada, without much being done to clarify the situation. The truth is that imperial relations with the elapse have tended to become more and more hopelessly befogged largely owing to the almost wholly political approach that has been customary. The nadir of statesmanship was reached in the declarations of the Imperial Conference of 1926 and the Statute of Westminster based on it by which the whole question was left to be a sport of chance and the cross currents of political life in any one of the self-governing dominions.

Professor Wittke has added a chapter dealing with recent events in the Dominion, most of them resulting from the economic stagnation of the country. Undoubtedly the most significant of these is the rise of a third party, the C. C. F. which is already making heavy inroads on the old-line parties. It might have been stressed here that though the new organization is mildly socialistic and the nation-wide in its organization, it draws its chief strength in the prairie provinces. Here it is closely identified with the farmers' party so that its appeal is likely to be largely sectional despite the fact that it has identified its cause with that of labour.

It is to be regretted that a few errors in the first edition have been perpetuated in this. The railway map on p. 313 shows Port Nelson as the terminus of the new Hudson Bay Railway instead of Fort Churchill. The Ontario government railway to Moose Factory, is entirely omitted, while the terminus of the Peace River line from Edmonton is shown as Fort St. John (still without railroad connection).

On Canada in the war, Professor Wittke is least satisfactory. He holds the balance quite fairly in the bitter disputes over the conscription issue in 1917, as far as the French population is concerned. But he has been misled by partisan accounts of the results of conscription. The Canadian corps in France had been maintained at the requisite strength by voluntary recruits up till the end of 1917 and that only by sending back to the trenches men and officers, who had several times been casualties. By 1918 the resources of men in Canada, available through voluntary enlistment, had been exhausted. The numbers made available by the draft, small as they were sufficed to maintain the four divisions at full strength in the line till the end of the war whereas the Australian forces recruited by voluntary enlistment, had to be withdrawn from the fighting after August, 1918. The statement, therefore on p. 303 that "the draft law failed to yield as many soldiers per month as volunteering had" while perfectly true is misleading.

It jars on the reader to be told on p. 304 that "at this engagement (Battle of Arras, 1917) the 'tank,' a new weapon of warfare, was introduced on the western front. Actually the tank was first used at Courcellette on the Somme in 1916. The reference on the same page to the "Princess Pats" as a sort of *corps elite* is somewhat misleading. After 1916 they were incorporated with the Third Division and fought side by side of other Canadian regiments till the end of the war.

S. R. TOMPKINS.

The University of Oklahoma.

Bishop, Morris, *The Odyssey of Cabeza de Vaca*. (New York: The Century Company, 1933, pp. vii, 306.)

In the year 1533, Alvar Núñez Cabeza de Vaca and his three companions began "the first stage of the Great Journey" across the North American continent. Many reams of paper have been covered with discussions of the possible route followed by those four, but it was not until the spring of 1933 that a book was released from press—the one that is herewith reviewed—which memorialized not only that event but the whole series of events which made up the life of Alvar Núñez Cabeza de Vaca. Only some ten years of that life have any interest for the average American reader—or twelve years (including the two spent in Paraguay)—if "American" is considered in the broader sense. And those twelve are significant because of the physical endurance and indomitable spirit of an individual and not because of any great contribution which he made to civilization, since such efforts as he attempted to make in that direction were a complete failure.

This work is divided into two parts—North America and South America. The first part has eleven chapters dealing with Cabeza de Vaca's youth in Spain, his departure from Spain with the Pánfilo Narváez' Expedition and their journey to Florida, the overland trip from Florida to the Bay of Horses, the sea voyage from the Bay of Horses to Bad Luck Island, off the Texas coast, the experiences on and near the island, the Great Journey overland to the west coast of Mexico, and the final arrival in Mexico City. Part Two treats of the much less familiar part of Cabeza de Vaca's life—the events which occurred after those recounted in his *Relación*. Bishop discusses these under the captions, Spain, the Journey to Paraguay, Paraguay, The Chaco, The Captivity in Asuncion, The End in Spain. As an appendix to the biography is a somewhat lengthy bibliography which the author says "contains only those works which have been of direct and specific service."

As a biography, Dr. Bishop's book may be classed among the best; as a literary effort it is most readable; as an historical study, it is helpful although not always reliable. Dr. Bishop, however, is not an historian and should be complimented for his inclusion of as much documentary evidence as the book contains, since his primary object evidently was to make his character live for his readers rather than to present an historical treatise.

One regrets that the book was published before Dr. Robert T. Hill's articles appeared in the *Dallas Morning News*, for his arguments that the four Spaniards did not follow the route given by Davenport and Wells (and accepted by Bishop), but one much to the north of it, seems almost indisputable. Even yet the subject is open to further investigation, and it seems to the writer that Dr. Bishop would have made his work of more historical value, if, instead of accepting Davenport and Wells' route without reservation

and stating in footnote 3, page 119, that "all other investigators went innumerable miles astray," he had mentioned that there are, to date, some thirteen suggested routes of Cabeza de Vaca from Bad Luck Island to Culiacán and had then presented the conclusion of Davenport and Wells as one possibility. Aside from a few other minor criticisms which to some might seem ungrounded, the book is of inestimable value as a contribution to the study of one of the early Spanish *adelantados* and as such deserves a place in American historiography as well as a place among well-done biographies of famous characters.

IDA TOBIN HOPPER.

The University of Texas.

Cohen, Morris R., *Law and the Social Order*. (New York: Harcourt, Brace and Company, 1933, pp. 403).

This volume comprises some twenty-five essays, written by the eminent professor of philosophy at New York University. Most of these essays have previously been published in legal and political periodicals. They range in subject matter from the status of legal thought in Europe to the importance of Mr. Harold Laski's *The Foundations of Sovereignty*. Because these short treatises are, for the most part, commentaries upon particular phases and concepts in jural philosophy, they are not so invaluable to the uninitiated as to the trained scholar in the field of legal theory. And, because of the nature of conditions under which the separate essays were produced, and especially concerning the time factor, there is not the unity of thought or the abiding thesis that go to make a literary work monumental. Each essay represents the reaction of Professor Cohen to a particular book or idea at a specific time; and, though his viewpoint has remained essentially the same throughout the years, there exists a considerable amount of repetition and duplication.

The author is a stout believer in the efficacy of the intellectualist approach to the problems of the modern world. Lay minds may, for the most part, be entirely unaware of the modern tendency to rely upon sheer mechanism in the law rather than to apply constructive criticism to accepted principles. In other words, legal philosophy has undergone something of the same metamorphosis in the past half-century as has political theory. Legal or social maladjustments have received little more than symptomatic treatment, and generally according to the prescription handbook of the social compact and natural law theorists. And, though the doctrine of natural rights may well have been a definite contribution to the great body of political thought, and though it may well have been a successful way of life in a simple, peaceful society, there exists more than a reasonable doubt if it can successfully escape destruction when an attempt is made to apply it to the problems incidental to an highly specialized industrial society. There are many evidences of this reliance upon mechanical legalism, *e.g.*, the faith that increased penalties will result in a diminution of crime against private property; the same tendency in the field of political thought and experimentation exhibits a fly-by-night popularity for fascism, guild socialism, syndicalism, and a dozen other isms of one kind or another.

Professor Cohen is essentially a social scientist, interested in utilizing the information gathered by trained scholars to improve the quality of justice that flows from our judicial institutions. Especially does he object to the phonographic theory of the law, *i.e.*, that once elected to a judicial position,

a man possesses a peculiar power of recognizing truth in the law or becomes a mysterious person to whom the law is transmitted in much the same manner as Moses received the first written laws of Israel. According to this thesis, a judge does not make law; he, like a phonograph, merely announces law; and his enunciations cannot be less than law, for they derive from these channels concerning which there can be no doubt of authenticity. This constitutes, in the word of Dean Pound, *Begriffsjurisprudenz*.

The author objects also to the opposite contention of the nominalists, like Jerome Frank, that there are no general rules of the law, that each case is decided by the conscience or lack of conscience of the judge. But more especially does Cohen resent the contentions of the modern positivists that metaphysics, the sincere attempt to think clearly, have no place in legal philosophy and that there is no purpose in attempting to analyze the apparently inscrutable. To Cohen, this represents a cowardly or defeatist philosophy, and one that offers little in the struggle that the human race continually wages in order to achieve a form and substance in justice more in conformity with the demands of existing social conditions.

CORTEZ A. M. EWING.

The University of Oklahoma.

Perkins, Dexter, *The Monroe Doctrine, 1826-1867*. (Baltimore: The Johns Hopkins Press, 1933, pp. xi, 580.)

This is the second volume of a projected four volume study of the Monroe Doctrine. In 1927 Professor Perkins published the first volume entitled, *The Monroe Doctrine, 1823-1826*. This was a critical survey of the origins and immediate effects of the famous declaration of American policy. In the present work Professor Perkins carries forward the story of the evolution of the Monroe declaration from the Congress of Panama in 1826 to the collapse of the Maximilian Empire in Mexico in 1867.

In the years from 1826 to 1843 the Doctrine played a very subordinate rôle. The author calls this a "Period of Quiescence." There were violations of the principles of the Doctrine by England and France, but "Not once in this period was the Doctrine invoked by those responsible for the conduct of the foreign policy of the United States. As a basis of action, the Doctrine was ignored, ignored completely and unequivocally."

The burning questions of Texas and Oregon revived interest in the Doctrine and it was reënnunciated by President Polk. Polk's message of December 2, 1845, was, according to Perkins, second only in importance to the message of December 2, 1823, in the history of the Monroe Doctrine. Polk's action marked a very decided step forward in the evolution of the Monroe Doctrine. His pronouncement "powerfully contributed to imbed in the public mind the memory of and the belief in the Monroe Doctrine." The great principle of policy, reviewed in the forties, took root in the fifties, and was consolidated and vindicated in the sixties. The relation, and quite often non-relation, of the Doctrine to problems of the fifties and sixties in Central America, Santo Domingo, and Mexico, is exhaustively analyzed.

Viewed as the most striking episode in the whole history of the Doctrine, the French intervention in Mexico is accorded nearly a third of the volume. Although Secretary Seward never directly invoked the Monroe Doctrine, its principles were constantly present by implication in his correspondence, and

it is Professor Perkins' opinion that Napoleon's decision to withdraw from Mexico was profoundly influenced by the American attitude.

Obviously a history of the evolution of the Monroe Doctrine which is in proper balance with the intensive study of its origin, must comprehend a multiplicity of events and incidents bearing direct or indirect relation to the Doctrine, whether they be of prime or dubious importance. The author cannot be charged with serious omissions. With scholarly care he analyzes as politically positive or negative the activities and pretensions of European nations in the Americas.

In his second volume Professor Perkins has maintained the high standards of scholarship set by his first work. The succeeding volumes are awaited with interest, for the more recent period presents the most difficult problems of interpretation.

J. LLOYD MECHAM.

University of Texas.

Price, Guy V., *Optimistic America*. (Kansas City, Missouri: Western Baptist Publishing Co., 1933, pp. 297.)

At the time that this essay in defense of optimism was published the country was just beginning to emerge from a general condition of pessimism and doubt. And even now there remains enough of the attitude of gloom to offer a definite challenge to such a confirmed optimist as Dr. Price proves himself to be. Personal confidence, energy, and hope are radiated throughout the work. No problem, however many confirmed pessimists may have pointed it out, has been able permanently to depress the author.

Beginning with a brief analysis of the origin and nature of optimism and its importance in the life of society, historical aspects of American optimism are reviewed from their European origins up to the present. In turn follow discussions of optimism among scientists and of bases for optimism which have grown out of the urban trend, out of the influx of immigrants to the country, and out of the increase of population. Educational, political, and international aspects of optimism are also discussed.

The book has three chief virtues. It is readable, and is clearly although not brilliantly written. It is up-to-date in its subject matter and in the authorities to which it refers. And it makes a powerful case against the extremes of blind optimism and inert pessimism. At times the optimistic tendency seems unreasonably strong, but it is unquestionably true that enthusiasm, determination, and energy are required for any kind of social action that is successful. This is particularly true in a time when tremendously difficult problems face America and the world. *Optimistic America* supports the idea of progress; it advocates idealism and repudiates realism and behaviorism; it assumes the influence of attitude on action. It is really an interpretation of American history in terms of an enthusiastic national confidence that will not be defeated.

However, the thoughtful reader will suffer considerable disappointment in this book. In the first place, he will feel that the analysis of the socio-psychological bases of optimism has been inadequate. In view of the fact that the whole thesis of the book rests on the social psychology of optimism, considerably more attention could have been given the matter. For example, it is suggested that hopelessness is the cause of social ills, but this is obviously not an adequate interpretation. And again, it is impossible to escape the

implication, in spite of everything that is said, that optimism in many cases accompanies ignorance, lack of interest in reality, and refusal to accept what is known in place of what is believed.

A more serious defect is that, as the work proceeds, it produces a growing sense that the material has been stretched to cover the subject and that there is an excess of authorities and quoted material. The approach seems sound, but the bulk of the work is a rehearsal of most of the standard courses in sociology and the ways in which the subject matter of each touches upon American optimism. The concept of optimism in turn becomes increasingly hazy and unsubstantial. If this method had not been employed, the actual contribution of the book could have been made in much less space and would have been more impressive. Many things are discussed which are left unrelated to the topic of optimism, and their inclusion is not well justified.

These defects decrease the value of the book except to those who measure importance in terms of number of pages covered and authorities cited; but the virtues mentioned above are not destroyed. Enthusiastic determination to improve conditions in spite of our difficulties is certainly not a mere attempt to escape unpleasant reality. It is a valuable frame of mind to cultivate, whether or not mental attitude produces action. If Dr. Price's optimism seems to be somewhat typical of the attitude of youth and of that part of America where a recent pioneer ancestry leaves a heritage of enthusiastic trial and perseverance in the face of failure, it is nevertheless a vigorous attack on the problems of the present and future which should attract common support.

MAPHEUS SMITH.

The University of Kansas.

Cheadle, John B., Eaton, Howard O., and Ewing, Cortez A. M., *No More Unemployed*. (Norman: University of Oklahoma Press, 1934, pp. 124.)

A lawyer, a philosopher, and a political scientist collaborate in this little volume to point the way to the solution of the problem of unemployment. Their proposal is, briefly, to establish an Industrial Stabilization Corporation designed to enable unemployed persons and idle machinery to work for mutual benefit through a medium of labor notes—in other words, a glorified barter system for idle men and instruments of production. This, as is pointed out by Professor Paul H. Douglas in an introduction to the volume, is not a new idea, it having been proposed by Robert Owen and by others more recently. This volume, however, gives the device a novel and more complete application.

Membership in the I. S. C. would be voluntary both on the part of workers and industry. Only workers who despaired of jobs in the regular lines of industry would work for the I. S. C. industries, and only totally idle plants or those which were operating under restricted output would subscribe for membership in the corporation, each being paid in I. S. C. notes. The Corporation would be a semi-governmental agency in charge of the administration of the warehousing of products under the plan and operating the mail order system of dispensing the goods in exchange for the I. S. C. notes paid out to workers as wages and to the producers for goods furnished under contract. Manufacturers would get contracts by competitive bidding and would deliver their goods to central warehouses. This system, according to

the authors, would put idle people and idle plant capacity to work, and would thus create new values which would otherwise never be created, and yet would harm no one, for any worker or any industry would prefer to engage in "cash" industry and would make the change to such industry whenever occasion afforded, subject, of course, to the fulfillment of the quarterly contract.

The authors have gone thoroughly into the ramifications and possibilities of their plan. They have circularized all types of persons, from Charles A. Beard to business men, for criticism of the plan, and a chapter is devoted to a refutation of these criticisms. Another chapter is devoted to the legal aspects of the problem in an effort to show the constitutionality of the plan. Without wishing to prejudice the possibility of the adoption of the plan by some other means, the authors propose in their last chapter a congressional act designed to establish the I. S. C.

The gravest defects of the plan, as pointed out in the introduction, would arise from the facts that the workers and machinery recruited would naturally be inferior to that employed in regular industry, that the system might be inaugurated in haste with great waste and loss of motion, and that actual production would be under the direction of private manufacturers, whose best interests on every occasion might not best be served by the successful working of a system offering a formidable alternative to the capitalistic economy. The crowning defect of the plan lies in the fact that the I. S. C. is predicated on the admission of the necessity of resorting to a lower standard of living for a portion of our population—a necessity which is vigorously refuted by the more militant social reorganizers. And yet this is a practical plan offered to solve a practical problem. Although these and other objections might be raised to the plan, it must be remembered that the least courtesy we can pay the constructive critic is a respectful hearing.

J. M. RAY.

The University of Texas.

Vinacke, H. M., *International Organization*. (New York: F. S. Crofts and Company, 1934, pp. 466.)

Several interesting approaches to the field of international organization have been embodied in the text-books which have appeared during recent years. This volume gives only incidental attention to international law and to international politics, specializing in a description and analysis of existing institutions and methods by which the affairs of the nations are managed. The author has assumed that "international society, viewed politically, has essentially the same needs to satisfy as does a national society." Consequently, there follows an examination of the legislative, judicial, executive, and administrative sides of international life for the purpose of ascertaining the extent to which these functions are adequately cared for in the existing community of nations.

The first chapters of the book deal with the basic conditions of international life, together with legal and theoretical considerations relating thereto. This involves a discussion of the nature of the state, its organs entrusted with the conduct of foreign relations, nationalism, federalism, and the "associative principle." While these chapters afford a good introduction to those which follow, it is possible that their usefulness might have been

increased by the inclusion of a more complete treatment of the theory relating to state equality and state sovereignty. There is some doubt, further, as to whether Chapter II, on the legal basis of international law, justifies itself. It is difficult to deal with the substantive rules of international law at all adequately within the confines of a single chapter.

Chapters VI to XV give a clear and accurate description of existing international organization. The approach is functional, institutions and agencies being discussed only as they relate to legislative, judicial, executive, and administrative functions. The League of Nations is not taken up as a unit, but in scattered chapters which portray its diplomatic processes, its methods of dealing with disputes, and its executive and administrative duties. Such an arrangement has much to commend it. Foremost among its advantages is its direction of the student's attention to objectives which need to be attained, and to the short-comings of contemporary machinery when viewed in the light of those objectives.

The author did not endeavor to give a detailed account of the activities of the organs of international society, as they operate in practice, but restricted himself to the constitutional side of internationalism. The task is a large one in itself. The subject might, however, seem more realistic to the reader if more references to actual practice had been included. For instance, the discussions and advisory opinions of the Permanent Court of International Justice might have been used to illuminate the purpose and procedure of that tribunal. The nature and functions of commissions of inquiry and conciliation might have been presented more convincingly by references to actual cases. Greater emphasis on the actual operations of the League of Nations within some of its manifold fields of endeavor would have provided the reader with a better understanding of that organization.

In general, the author has prepared a book which should find a useful place as a text. The criticisms to which it is open relate, in the main, to matters regarding which differences of opinion are inevitable. The course in international organization may be arranged and conducted in a variety of ways and with varying emphases. This text will conform to the needs of many courses in the subject.

NORMAN L. HILL.

The University of Nebraska.

Cummins, E. E., *The Labor Problem in the United States*. (New York: D. Van Nostrand Company, Inc., 1934, pp. xiii, 821.)

For a basic survey of the whole problem of labor in all its aspects, the present volume is an admirable contribution. Professor Cummins has organized his material along lines which are original, logical, and striking. After considering the general nature of the labor problem, and the historical causes which gave rise to it, he proceeds to study at length the indictment that labor brings against the employer and the present economic and political set-up. Following this, he sets forth the contribution made by each of the three interested parties to the dispute,—unions, employers, and government,—to the solution of the problems raised. As his title indicates, his material is almost entirely devoted to this country, although he is occasionally forced to consider foreign legislation where the United States affords no illustration at all, as in connection with health and unemployment insurance.

The subject of labor is so highly controversial that it is a severe test of that balance and impartiality which should mark the work of a social scientist. Professor Cummins passes the test with flying colors. He writes with an admirable detachment, but that does not mean that he entirely ignores his sympathies. He is a liberal in the best sense of the word: he recognizes the presence of injustice and abuses and exploitation, but he is not committed to any dogmatic, *a priori* program of reform. His ability to see both sides is best shown in the concluding portion of the book, in which he purports to demonstrate (and succeeds, I think) that the tactics of both parties in the struggle are more or less pre-determined by the very nature of the economic milieu.

The author writes with a richness of historical, theoretical, and philosophical allusion which is as pleasing as it is rare in a book of this nature. And unlike so many professorial writers, his ideas are expressed in a medium which merits the appellation of literary style, so that it is a source of pleasure as well as profit to read his pages. The chief drawback of the book, on the other hand, is the absence of any bibliography. A few sources and authorities are cited here and there in the footnotes, but the inclusion of a comprehensive bibliography of the general subject would add considerably to the value of the work.

J. H. LEEK.

The University of Oklahoma.

BOOK NOTES

Johnson, Claudious O., *Government in the United States*. (New York: Thomas Y. Crowell Company, 1933, pp. xiii, 667.)—Why give birth to another textbook on American government? Mr. Johnson's act seems justifiable for at least two reasons: (1) his approach is a study of Government from a functional standpoint; (2) for a factual treatment the work is up to date, since it includes the "revolutionary" New Deal legislation and carries a discussion of administrative reorganization which took place in 1933. The book under review has value—its arrangement is novel. Instead of following the characteristic traditional national, state and local approach the author attacks his problems from the executive-legislative-judicial viewpoint. This method tends to simplify the questions of presentation and at the same time lessens the emphasis which is so often placed upon territorial boundaries—the latter today shows evidence of fading into the background. The book is not so overburdened with meticulous details that it is deadly. On the other hand, it abounds with a rather copious number of practical examples and much illustrative material. The facts given are in most cases presented in a clear and forceful manner, all of which adds to the readability of the volume. Perhaps no great fault should be found with the work, for the author seems very well to have fulfilled his purpose as stated in the preface of his volume. Yet, it appears that there is a growing need for a textbook in American government which would emphasize more the changing theory and practices in government—a work which would spend more time upon explanations of facts rather than upon their enumeration. But could this all be embodied into a single volume?

S. A. M.

Particularly timely in these days when conditions not only facilitate but demand changes in the spirit and the structure of government is the volume by Charles P. Taft called *City Management: The Cincinnati Experiment* (New York: Farrar and Rinehart, 1933, pp. viii, 275). Essentially a chronicle of the civic history of Cincinnati for the last fifty and more especially for the last ten years, the book presents in a pleasantly fresh and informal manner the story of the early efforts at "reform" in that city, of the events immediately precedent to the adoption of the manager plan, and of manager government in operation there. Here are passed in review the Cincinnati Association, the Birdless Ballot League, the City Charter Committee, the activities of such men as Murray Seasongood and Henry Bentley, the operation of proportional representation in Cincinnati, the experiences of the Chartermen in county and in national politics, and many another interesting and significant matter. The reader gets the impression in turning the pages of the volume that criticism and evaluation have been subordinated to chronology, yet when the last page is done the conclusion is inescapable that the author has not been too sparing with either praise or condemnation. If the book contains a moral lesson, it certifies to the excellence of the manager plan and to Cincinnati's progress thereunder. Incidentally, but quite importantly, it attests the value of a permanent organization whose business is to "keep an eye," in the better sense of the phrase, unwaveringly on the city hall, and a finger on the pulse of the public. In performing these services, the Charter group of Cincinnati has placed itself in a position to assume complete responsibility for the outstanding success in manager government of which Mr. Taft has written so excellently.

R. C. M.

In his *Treaties Defeated by the Senate* (Baltimore: Johns Hopkins Press, 1933, pp. vi, 328), Dr. W. Stull Holt seeks to appraise the motives of the Senate in rejecting a number of treaties negotiated by the President. The results of his painstaking analysis of the circumstances attending the defeat of treaties should be rather distressing to the advocates of our constitutional system. All too often national interest is subordinated to party interest. "We cannot allow the Democrats to take credit for settling so important a dispute," said a Republican senator in explaining his opposition to a treaty. Democratic senators have been equally guilty of like motives. There is more than coincidence in the fact that treaties fare badly in presidential years. Next to partisanship, senatorial defense of prerogatives and jealousy of the Executive has constituted the most prolific cause of treaty rejection. "The individual senators evidently consider the prerogatives of the Senate as far more important than the welfare of the country," said Theodore Roosevelt. Dr. Holt is of the opinion that the constitutional provision giving one-third plus one of the Senate the power to veto a treaty was a grave mistake. Although he deplores the functioning of the treaty-making power in the Senate, he offers no constructive criticism. Moreover, when one considers that up to 1928, the Senate was responsible for the failure of less than 14 per cent of the 787 treaties considered, it can hardly be charged that the treaty power of the United States has broken down.

J. L. M.

Warner, Kenneth O., *An Introduction to Some Problems of Australian Federalism*. (Seattle: University of Washington Press, 1933, p. xi, 312.) The general similarities between the federal systems of Australia and the United States have been frequently remarked; but it is nothing short of amazing to find that in so many relatively minor tendencies and experiences our history has been recapitulated by Australia in her thirty-odd short years of federalism. Centralization, federal railway regulation, federal subsidies to the states, reciprocal immunity of governmental agencies from taxation, even a secession movement,—all these phenomena which we are inclined to think as so peculiarly typical of our American type of federalism, are to be found in Australia too.

The study considers state-federal relations in general, as embodied in the Constitution, and then gives more specialized attention to such problems as railways, banking, taxation, the tariff, and governmental borrowing. On the whole, the author concludes that the working out of the Australian Constitution has revealed serious faults, and that the document should be overhauled and subjected to considerable change.

Professor Warner has collected an impressive store of interesting and important material, but it is to be regretted that his style is legalistic and rather ponderous. He is a master of erudite circumlocution, and the result is that his study leaves something to be desired as to clarity and ease of comprehension.

A valuable and extensive bibliography, both of official and secondary sources, is appended to the book, as well as a copy of the Commonwealth of Australia Constitution Act. There is also an addendum on very recent developments in the federal-state relationship which were not incorporated in the body of the work. The study would have been considerably clarified, and its value enhanced, had a map of Australia been included for purposes of reference.

J. H. L.

The Roosevelt Administration has acted with such rapidity as to leave the ordinary citizen, seeking to follow events from the newspapers, in a state of bewilderment. And the teacher of government and economics finds it necessary to look for a convenient handbook on the "New Deal" for use in introductory courses. For these two, the busy citizen and the college student, *The Future Comes, a Study of the New Deal*, by Charles A. Beard and George H. E. Smith (New York: The Macmillan Company, 1933, xii, 170) answers the need for a summary. It is readable, covers the essential facts in brief and summary fashion, and furnishes a measure of interpretative analysis. There are chapters on economy in government, industry and transportation, agriculture, finance, relief and public works, preceded by an account of the crisis of March, 1933, and followed by a statement of the principles of the "New Deal" as gleaned from the statements of its most fervent advocates. Legislation, administrative organization, and early operation are summarized in each case. The book closes, however, with only a glimpse into the problems of the future. Six months have passed since this book was published and there is urgent need for a more critical analysis of the work of the Administration and of the economic, administrative, and political problems to be faced in the further development of its program.

E. S. R.

The Retirement of Public Employees in Virginia (New York: D. Appleton-Century Company, 1934, pp. xvi, 269), by Rowland Andrews Egger. This is the first monograph to appear in the series to be prepared upon Public Administration by The University of Virginia Institute of Research in the Social Sciences. The work was undertaken at the request of, and in collaboration with, the League of Virginia Municipalities. The first chapters of the volume treat of pensions from a legal standpoint and lean indeed heavily upon Professor Frederick Green's work, "A Review of Judicial Decisions Relating to Civil Service Pensions"—as Mr. Egger frankly admits in his preface. Chapters III and IV are studded with numerous tables and charts carrying data showing minimum health and decency budgets for municipal employees, age and rate of withdrawals from municipal service, ages at which disability occurs, age at marriage, death rate and the like. The remaining chapters deal with the principles of pensions and retirement systems from an actuarial and structural viewpoint. The information is used in drafting model pension ordinances for those municipalities of Virginia desiring to establish provisions and set up funds for the retirement of their municipal servants. The work is essentially a manual prepared to meet a practical need.

S. A. M.

In bringing out *New Governments in Europe* (New York: Thomas Nelson and Sons, 1934, pp. 236), Dr. Raymond Leslie Buell and the Foreign Policy Association have performed a distinct service. The book consists of five chapters on Fascist Italy, as many more on Nazi Germany, a section on the Baltic States, three chapters on Soviet Russia, and three on Republican Spain. The authors of the respective parts are Dr. Vera Micheles Dean, Dr. Mildred S. Wertheimer, Professor Malbone W. Graham, Dr. Dean, and Mr. Bailey W. Diffie. Based primarily on the familiar Foreign Policy Reports brought down to date, the volume presents a carefully prepared but readable account of "The Trend Toward Dictatorship." The authors make no pretense to exhaustiveness: indeed some critics may call their work superficial. There is a place, however, and an important one, for books which do not probe too deeply but which afford a rounded discussion of the more familiar aspects of a problem. Such a service is well performed by the volume at hand for the revolutionary governments of Europe. Laymen as well as students not only will profit from but will enjoy reading the book.

Soviet Russia, 1917-1933, by Dr. Vera Micheles Dean, is the second study in a series published jointly by the Foreign Policy Association and the World Peace Foundation. In nature it is not greatly different from the volume reviewed above, and like the earlier work also this booklet is well worth the reader's time.

R. C. M.

The various annual reports of the Bureau of American Ethnology have, for long, been regarded as authoritative by American scholars. Indeed, they are manifestly indispensable to any serious study of the American Indian and his customs. Though infinite care was taken in the selection and preparation of the original manuscripts, it is only natural that some errors made their appearance in the reports. Scholars are now following a general policy of verifying these accounts. One of these attempts, R. F. Fortune's *Omaha*

Secret Societies (New York: Columbia University Press, 1932, pp. vi, 193), tests the validity of studies made by Rev. J. O. Dorsey, Miss Alice Fletcher and Dr. Francis La Flesche on the customs of the Omaha Indians. Specifically, the work is limited to a description of the four great secret societies of the Omahas—the Buffalo Society, the Ghost Society, the Grizzly Bear and Rattlesnake Society, and the Water Monster Society and the Midewiwin. All of these secret organizations exploited the members of the tribe, practicing their black arts openly. For their services, they took horses and blankets and other things of value. It is a revealing piece of work, and though the author admits that the present sources of information are not wholly reliable, there is reason to believe that the findings are substantially correct. In the latter part of the book, Fortune relates some accounts of religious experiences which he bought or cajoled from the Omahas. Upon reading them, one can realize why the task of collecting data on secret doctoring societies is an extremely difficult one.

C. A. M. E.

Price Control Devices in N.R.A. Codes, by George Terborgh (Washington: Brookings Institution, 1934, pp. 45), is a compact but thorough treatment of one of the thorniest problems before the Recovery Administration. Though a "general appraisal of these price-control devices from the standpoint of public policy" is left "until a later occasion," this little work gives an excellent analysis of the devices and shows clearly the many administrative difficulties in enforcement. There is adequate evidence in the book for the final conclusions that "clear-cut principles or standards of public policy in the matter of price control" have not been developed, that there is "need for more discrimination" in framing price-control provisions, and that there is a strong probability that in many cases the device will turn out to be almost if not quite non-administrable." It is to be hoped that this excellent study will set an example and standard for a number of studies in the administrative problems under the "New Deal."

E. S. R.

Professor Emilio A. Coni in recent years has published: *Los Prestamos de Colonizacion del Banco Hipotecario Nacional* (Buenos Aires: El Ateneo, 1931, pp. 47); *Las Tasaciones en el Banco Hipotecario Nacional* (Buenos Aires: El Ateneo, 1932, pp. 55); and *Diez Meses Director del Banco Hipotecario Nacional* (Buenos Aires: El Ateneo, 1931, pp. 48). He is the ablest of the rural economists in Argentina. In his capacity as adviser in farm management to large estates in Argentina, as professor in the University of Buenos Aires, and as director of the national mortgage bank, he has a practical knowledge of agricultural credit second to none in his country. The first of the monographs listed above is a quantitative study of the loans made by the bank to various agricultural colonies and is one of 29 studies he has published in this general field. A chart map shows the location of the various colonies and the present condition of the loans. Various tables and analyses describe the whole system of agricultural loans to farm colonies. The second monograph describes the system of loans through the bank to both rural and urban clients. Methods of valuation of land, of fixing the interest payments, collections, losses, and errors of procedure are described on an extended quantitative basis. The third monograph records

his experiences and administrative problems, with an account of how he met them, as director of the national mortgage bank. It is an important case study of administration in process, very clearly set forth for the instruction of the student of mortgage banking methods. These three monographs give good insight into mortgage banking law and practice in Argentina.

L. L. B.

Germany—Twilight or New Dawn? is the title of a 1933 book from the Whittlesey House division of McGraw-Hill. Its author is "... a German who must remain anonymous." Why he must remain anonymous is not clear, for he has made a valiant and, so far as may be ascertained at this time, successful effort to present the pros and the cons of the Hitler regime with equal fidelity. Indeed, he has achieved a degree of detachment which, in view of his intimated closeness to the German scene, is unusual. Of particular significance among the opinions to which he gives statement is that which places Hitler at the head of the Nazi party in fact as well as in name, though it is granted that the Dictator has a number of able collaborators, more than one of whom potentially are his rivals. Of outstanding interest also is his evaluation of the leaders of Nazism, which is found in a chapter entitled "Germany's New Masters." The book as a whole is worth the time of any one who would understand more of Hitler's Reich: it is well written, it attempts to make no case, and it appears reasonably accurate. It compares favorably with other volumes of recent publication on Nazi Germany.

R. C. M.

The ABC of the NRA by Charles Dearing, Paul T. Homan, Lewis L. Lorwin, and Leverett S. Lyon (Washington: Brookings Institution, pp. 185), is what its name indicates—a mere primer. Some of the chapters, as those on "The Background of the Act" and "The Legal and Political Issues," are so sketchy and superficial that the reviewer wonders if anyone would gain by their reading. On the other hand, the outline of the administrative organization and the summary of the process of administration of the act will be useful to many. Even more helpful to some will be the appendices. There one may find a collection of sample codes, statements of the President, a copy of the "Reemployment Agreement," and the act itself.

E. S. R.

La Semana de 40 Horas (The 40-hour week) by Emilio A. Coni (Buenos Aires: Compañía Impresora Argentina, 1933, pp. 13), reviews the causes of the vast unemployment in Argentina, attributing it primarily, but not exclusively, to international tariffs and to too much paternalistic legislation and taxation at home. The author argues that lowering the work week to 40 hours would only add another burden to industry and diminish rather than stimulate production. He urges that paternalistic taxes be lessened rather than increased as a stimulus to employment.

L. L. B.

El Proceso Economico de un Pedazo de Pan (The Economic History of a Piece of Bread), by Emilio A. Coni (Buenos Aires: Compañía Impresora Argentina, 1933, pp. 34), is one of those delightful little masterpieces for the public schools which, because of its dramatic appeal and economic accuracy, should be a part of the reading of every public school child.

L. L. B.